



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 210 OF 2016

JAMES KIMATHI MUTHUI (Suing as the legal representative of the Estate of

EUTYCHUS MUTHUI (Deceased) **PLAINTIFF**

VERSUS

NTIBUKA M'MBURUGU M'IBURI **1ST DEFENDANT**

CONSOLATA M'BURUGU **2ND DEFENDANT**

JOSEPH GATURU **3RD DEFENDANT**

LAWRENCE M'MBURUGU **4TH DEFENDANT**

RULING

1. Through a ruling dated 8.12.2021 the court allowed an application for the filing of three additional documents within 7 days and the matter to be listed for hearing within 45 days. Parties took a mention date for 21.2.2022 to confirm compliance of the above orders.
2. Mr. Orimbo advocate appeared for the plaintiff and submitted that they had not complied with the court order since his client had been bedridden. Later at 1.30 p.m. Miss Mbogo advocate for the defendants told the court she had been served with a list of documents dated 26.2.2022 which was not in compliance with the court orders since the documents listed as No. 1, 2 and 3 were new documents. Therefore, she prayed the documents be expunged from the court record for they were not contemplated in the application dated 21.3.2019.
3. Mr. Orimbo advocate responded and submitted the documents were very vital to his client's case and hence prayed that the court allows for the late filing of the documents since the defendants shall have an opportunity to cross-examine.
4. Miss Mbogo advocate took the view that when the court gave directions, it was on the basis of what was disclosed then but it appeared the plaintiff has widened his scope after the ruling and sought to add more documents than was allowed.
5. The plaintiff filed a list of documents dated 2.11.2016 and took the witness stand on 20.1.2019.
6. By an application dated 21.3.2019, the plaintiff sought to reopen the suit and produce a mutation form for L.R **Nyaki/Kithoka/474**, a registered copy of records for 1574 and a notifications for sale.
7. This court allowed the request and ordered that the documents be filed and served within 7 days.
8. The plaintiff did not comply with the order within 7 days and has given no explanation for non-compliance. Instead, on 21.2.2022, the plaintiff filed a list of documents dated 21.2.2022 with 5 items namely:- letters dated 10.1.2020, 22.1.2020 he wrote to Chief Magistrate Meru seeking for judgment in **Meru CMCC No. 61 of 1987**, Gazette Notice No. 1945, copy of register for **Nyaki/Kithoka/1574** and a mutation form.
9. In my view, it is apparent the plaintiff is out to endlessly delay this matter by failing to comply with court orders.
10. For the ends of justice to be met and given the age of the matter, I allow the filing and direct the matter to be listed for hearing within 90 days failure of which it shall stand dismissed for non-prosecution. The defendant shall be granted an opportunity to file any rival documents to the ones filed by the plaintiff within 30 days from the date hereon.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

THIS 23RD DAY OF MARCH, 2022

In presence of:

Orimbo for plaintiff – present

Miss Mbogo for defendants – present

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE