



Gachoki & 3 others (Suing as pastor in charge, Chairman, Secretary and Committee members, Grounds of Truth Church) v Mwendwa & 3 others (Environment & Land Case 460 of 2014) [2022] KEELC 15704 (KLR) (22 July 2022) (Ruling)

Neutral citation: [2022] KEELC 15704 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 460 OF 2014
EC CHERONO, J
JULY 22, 2022**

BETWEEN

**JOHN GACHOKI 1ST PLAINTIFF
BENJAMIN MUCHIRI 2ND PLAINTIFF
HOSEA MWANIKI 3RD PLAINTIFF
ROBERT NYAGA 4TH PLAINTIFF
SUING AS PASTOR IN CHARGE, CHAIRMAN, SECRETARY AND
COMMITTEE MEMBERS, GROUNDS OF TRUTH CHURCH**

AND

**SILAS MWENDWA 1ST DEFENDANT
SYMON NJERU MUKUOGO 2ND DEFENDANT
JOTHAM NW NGURE 3RD DEFENDANT
THE GROUNDS OF TRUTH REGISTERED TRUSTEES 4TH DEFENDANT**

RULING

1. The plaintiffs/applicants, vide a Notice of Motion dated March 14, 2022 seek the following orders;-
 - a. That leave be granted to the Defendant to file further witness statements and further documentary evidence before closing Plaintiffs case.
 - b. That the witness statements and further list of documents annexed be deemed as duly filed and served upon payment of the requisite court fees.
 - c. Costs of the application be in the cause.



2. The application is supported by grounds apparent on the face of the said application and an affidavit of John Gachoki sworn the same date. The application is opposed with Grounds of opposition filed by the firm of M/s Magee Law Llp dated March 21, 2022. When the application came up for hearing on March 17, 2022, the parties agreed to canvass the same by written submissions.

Applicants/plaintiffs case and submissions

3. The 1st plaintiff/Applicant in his affidavit in support of the application deposed that the facts contained in the statement which they are seeking leave of this court to be filed go to the root of the plaintiffs' claim and that it will enable the court to conclusively and effectually determine the issues in controversy.
4. The applicant further deposed that since the defendants have not opened their case, they will not suffer any prejudice as they will have an opportunity to rebut and/or cross-examine the witness on any issues that may be brought out in the statement. He relied in the case of Leonard Munyua Mbugua & Another V Equity Bank Limited (2020) e KLR.
5. The applicants stated that in an application for Amendment dated August 3rd August 2017, this court allowed them to Amend their plaint to add the Ground of Truth Registered Trustees as a party to this suit. Given that the new entity is not a human being, it behoves that a representative of the said entity be allowed to participate in the proceedings by way of filing statement or any other mode of ventilating their claim.
6. The applicant also submitted that from a cursory perusal of the draft statement of the intended witness, namely Benjamin Muchiri who is the 2nd plaintiff and founder of the subject Church clearly shows the particulars of fraud and illegal acts done by the defendants/respondents herein. In conclusion, the applicant submitted that this application only seeks to enforce the orders issued by this court procedurally while its denial would render its prior orders futile and incapable being acted upon.

Respondents case and submissions

7. According to the Respondents, the application is an afterthought, the same having been brought 9 years after the filing of the suit. They submitted that the said application if allowed will be unjust, unfair and unreasonable as it will delay the 1st and 3rd defendant's right to a fair, speedy and expeditious hearing which amounts to miscarriage of justice. They cited the following cases in opposing the application, Selestica Limited Vs Gold Rock Development, Civil Appeal No. 48 of 2015, Kenya Commercial Bank Limited Vs John Benjamin Wanyama, Civil Appeal No. 97 of 1999.
8. On whether the Applicants have satisfied the conditions for the grant of leave to file further witness statements and further documentary evidence before closing the plaintiffs case, the defendants submitted in the negative and argued that the plaintiffs closed their case on June 12, 2019. They argued that there is inordinate delay in bringing the application 9 months after the filing of the suit. They submitted that allowing the application would prejudice the fair hearing of this case. They relied in the following cases- Raila Odinga & 5 Others v I.E.B.C & 3 Others (2013) e KLR, Nakuru Automobile House Ltd v Lawrence Maina Mwangi & District Land Registrar, Nakuru Case No. 204 of 2014, Johana Kipkemoi Too v Hellen Tum (2014) e KLR, Britania Sacco v Jambo Biscuits Ltd (2018) KLR , Hannah Wairimu Ngethe v Francis Ng'ang'a & Anor, (2016) e KLR.



Legal analysis and decision

9. I have considered the application, the affidavits, both in support and in opposition to the application as well as the rival submissions. This application is brought under Order 3 Rule 2(1) CPR which provide as follows;
2. All suits filed under rule 1(1) including suits against the Government, except small claims, shall be accompanied by-;
- (a) The affidavit referred to under Order 4 rule 1 (2);
 - (b) A list of witnesses to be called at the trial;
 - (c) Written statements signed by the witnesses excluding expert witnesses; and
 - (d) Copies of documents to be relied on at the trial including a demand letter before action;
- Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under order 11”.
10. The law on the procedure of filing of documents particularly statement by witnesses which require to be accompanied by the plaintiff. The rules provide an exception where the plaintiff is given a window to file the document with leave of the court at least fifteen days before pre-trial directions and conferences. This suit came up for pre-trial directions and conferences on September 20, 2021 and the Counsel for the plaintiff informed the court that he had fully complied. The plaintiff cannot be allowed to file documents as he wishes when there are rules of procedure stipulating the timelines for the filing of the same. The application in my view has been brought after unreasonable delay.
11. The upshot of my finding is that the Notice of Motion dated March 14, 2022 is without merit and the same is hereby dismissed with costs. Orders accordingly.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 22ND JULY, 2022.

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HON. E.C. CHERONO

ELC JUDGE

