



REPUBLIC OF KENYA



KENYA LAW
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**Wanjohi v Karimi & 5 others (Environment & Land Case
17 of 2019) [2022] KEELC 15696 (KLR) (15 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 15696 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 17 OF 2019**

EC CHERONO, J

JULY 15, 2022

BETWEEN

CYRUS GITHINJI WANJOHI PLAINTIFF

AND

THOMAS THUKU KARIMI 1ST DEFENDANT

CATHERINE WAWIRA MURIUKI 2ND DEFENDANT

MURIUKI SAMSON MURIITHI 3RD DEFENDANT

WESTON KANYIRI MURIUKI 4TH DEFENDANT

JOSEPH KAMAU MURIUKI 5TH DEFENDANT

ISAAC MWANGI MURIUKI 6TH DEFENDANT

RULING

1. The applicant has moved this honourable court vide a notice of motion dated February 17, 2022, seeking the following orders:-
 1. (Spent).
 2. That this Honourable Court be pleased to suspend the filing of written submissions.
 3. This Honourable Court be pleased to grant leave to the Defendants to reopen the Defendants' case to adduce additional evidence.
 4. That costs of the application be in the cause.
2. The application is supported by the affidavit of Catherine Wawira Muriuki sworn the same date. The application is also supported by grounds apparent on the face of the said application.



3. Pursuant to the provisions of Order 51 Rule 14 *CPR*, the plaintiff/respondent filed grounds of opposition dated 24/2/2022. When the application came up for hearing on 5/5/2022, the parties agreed to canvass the same by written submissions.

Defendants/applicants Summary Of Facts & Written Submissions

4. The 2nd defendant deposed that a lot of time had elapsed since 2011 when she did the transaction in question and that she had kept the transaction documents with her husband and she also assumed that she had given some of the documents to her advocate.
5. She stated that after she had testified on 16/2/2022, she realized the advocate was not producing the documents as expected until they left the court premises that the lawyer told her that she had not handed over the same to her.
6. The 2nd applicant submitted that failure to produce the said documents which are crucial in the determination of the dispute between the parties was an inadvertent mistake. She stated that the respondent will not be prejudiced if the application is allowed since the documents she intends to introduce will shed light on the issues in controversy. The Applicants through their advocate M/s Anne Thungu & Company Advocates cited the following cases in support of the application; - *Philip Chemwolo & Another v Augustine Kubende* (1986) eKLR, *Samuel Kiti Lewa v Housing Finance Company Of Kenya Ltd & another* [2015] eKLR, *St. Patrick's Hill School Limited v Bank Of Africa Kenya Limited* (2018) eKLR, *Republic v District Land Registrar, Uasin-gishu & another* (2014) eKLR.
7. In conclusion, the applicants submitted that they are in no way trying to patch/fill the gaps in the case.

Respondents Summary Of Facts And Submissions

8. The respondent through his firm of advocates M/s Nganga Munene & Co. Advocates filed grounds of opposition and averred that the application is bad in law, frivolous, vexatious and a gross abuse of court process. By the timing of writing this Ruling, the respondent had not filed their submissions.

Analysis And Decision

9. I have considered the Notice of Motion application, the supporting affidavit and the grounds of opposition as well as the submissions by the applicant.
10. The gist of the application is that applicant is seeking leave of this Honourable Court to re-open their defence and be allowed to introduce new evidence which they allege were left out inadvertently. According to the 2nd applicant/plaintiff, she had kept the alleged documents with her husband and assumed that even her lawyer had custody of the same. She only came to realize that it was not in her custody after she had testified on 16/2/2022. She wants this Honourable Court to apply the 'oxygen principle' in order to facilitate the just, expeditious, proportionate and affordable resolution of disputes between parties.
11. It is important to note that both the plaintiffs and the defendant had closed their respective cases and directions were taken on 16/2/2022 for parties to file their submissions. It was during the pendency of those submissions that the defendant filed the present application. This application is brought under Section 1, 1A, 3, and 3A *CPA*. Which are discretionary powers given to the Courts to be exercised in the interest of justice. In considering an application for reopening of a case already closed, the Court must be careful not to condone the negligence of a litigant who fail to conduct pre-trial hearing with his/her advocate and ensure that their house was in order before the case is heard.



12. The defendant/applicant in the supporting affidavit admits that the documents she now wishes to introduce were held by her husband. She should have confirmed that those documents were available before the case was certified as ripe for hearing when pre-trial directions were taken. This application is not one where the applicant, despite the exercise of due diligence, would not be retrieved, but a case of outright negligence. Such negligent act should lie where it belongs and not in the exercise of judicial discretion.
13. For the foregoing reasons, I find the Notice of Motion dated February 17, 2022 lacking merit and the same is hereby dismissed with costs. It is so ordered.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 15TH JULY, 2022.

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HON. E.C. CHERONO

ELC JUDGE

In the presence of;

Nganga for the Plaintiff/Respondent

Muturi holding brief for Ann Thungu for the Defendant/Applicant

Kabuta – Court Assistant.

