



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Case 5425 of 1992

ANN WANJUNU.....PLAINTIFF

VERSUS

MWIHAKI WARUIRU.....1ST DEFENDANT

LAND REGISTRAR KIAMBU.....2ND DEFENDANT

NYAKINYUA INVESTMENTS LTD.....3RD DEFENDANT

RULING

The dispute involves land which was purchased by the 3rd defendant, subdivided and allocated to its shareholders. The parcels are claiming the same premises **LR NO. RUIRU/RUIRU/EAST BLOCK 2/4785**. The plaintiff gave evidence, called her witness and closed her case. The defendant gave her evidence and called 2 witnesses.

Counsel for the defendant wanted DW3 NDUNTA NDIRANGU to produce the register of members of the 3rd defendant **NYAKINYUA INVESTMENT LTD** who for some reason had abandoned the suit.

This was objected to by counsel for the plaintiff who submitted that

the said register was not one of the documents in the defendants list of documents and the plaintiff having closed her case, she will be prejudiced. Though counsel for the defendant conceded that the said register was not intended in the defendants' list of documents, he submits that the same was not in the custody of the defendant. I agree with counsel for the plaintiff that out rules of Civil Procedure do

not allow production of a document which does not form part of the documents exchanged by parties and having concluded closed the plaintiffs' evidence, the production of that document will prejudice his client.

But should procedural technicalities be allowed to suit out a part from justice? It is a cardinal principle that procedural technicalities should not be used as a vehicle to promote injustice.

I agree with counsel for the defendant that the said register was not in the custody of the defendant but that notwithstanding, he ought to have involved the provisions of Order XV Rule 1 which provides:-

“At any time after the suit is instituted the parties may

**obtain on application to the court summons to persons
whose attendance is required ether to give evidence or to
produce documents.”**

But this he did not do. Rules of procedure are not there for the sake of it. The should be complied with. However the courts of law are there to so that justice is done to litigants.

In the event that technicalities are likely to occasion injustice, then Section 3A of the Civil Procedure Act comes in to rescue. It provides.

**“Nothing in this Act shall limit or otherwise affect the
inherent power of the court to make such orders as may
be necessary for the ends of justice. Or to prevent abuse of the process of the court.”**

I invoke this provision for the end of justice and order that the Secretary of Nyakunyua Investments Ltd , the 3rd defendant herein who have abandoned these proceedings and who have in their custody the company documents do appear and produce any relevant documents to assist this court to arrive at a just decision and he will be available for cross examination by both counsel for the plaintiff and the defendants. Those are the orders of this court.

Dated this 23rd day of June 2005.

J.L.A. OSIEMO

JUDGE

Court:

The matter stood over to 29th June 2005 for mention for directions. Secretary –
Nyakinyua Investments to be summoned.

J.L.A. OSIEMO

JUDGE