



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 61 OF 2016

FRANCIS MURITHI RUTERE (Suing as the administrator of the

estate of M'RUTERE M'MUNYANGE

alias RUTERE MUNYUGI.....PLAINTIFF

VERSUS

JULIUS MUTWIRI NJUKI (suing as the administrator of the

estate of NJUKI MUNYUGI.....1ST DEFENDANT

PHINEAS MUTWIRI.....2ND DEFENDANT

RULING

1. Counsel for the plaintiff has urged the court to expunge the statements of Rael Ngugi and Phineas Mutwiri filed in the list of defendant's witnesses on 15.1.2021, as the same contravenes the orders given by the court on 26.10.2020.

2. Counsel for the defendants has however urged the court to allow the said statements averring that the court had even closed by the time they were supposed to comply with the orders of 26.10.2020.

3. I have considered all the arguments raised by advocates for the respective litigants. I find that the witness statements for the defence side were supposed to be filed by 26.12.2020. Indeed the court had closed due to Covid pandemic but this was in late November and the court was opened on 7.12.2020. The closure of the court cannot be the reason as to why the statements were filed on 15.1.2021.

4. Notwithstanding, the foregoing, I have considered the chequered history of this case which has been in the court corridors for well over 10 years. The trial is now underway where plaintiff's case has been closed. Having waited for all these years to tender their version for the truth, then it is only appropriate to give each side an opportunity to adduce their evidence in the best way possible. To this end the court takes into account that the right to be heard is a cardinal rule anchored on the principles of natural justice - "*audi alteram partem*".

5. I have also taken into consideration that although the plaintiff's case has been closed, the statements in question had been served upon the plaintiff's side before the commencement of the hearing on 20.1.2021.

6. In the case of **Esther Wambui Njenga vs Harrison Mwangi Nyota and 2 others (2018) eKLR**, Judge Munyao stated as follows:

"I would not, on my part encourage parties to file their documents other than is set down by the Civil Procedure Rules, but I think it is only fair to allow each party an opportunity to fully ventilate their case, if for no other reason, but so that the whole truth is revealed".

7. The unfolding evidence is that the dispute is deeply rooted in the families of the litigants. It is pertinent that the whole truth be established and this may not be possible if some evidence is locked out.

8. In the circumstances, the objection is not sustained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 21ST DAY OF JANUARY, 2021 IN PRESENCE OF:

C/A: Kananu

Mbaabu C. for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE-MERU