



Ahmed v Lamu Marine Services Limited & 3 others (Environment & Land Case E013 of 2023) [2025] KEELC 1119 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E013 OF 2023**

**FM NJOROGE, J
MARCH 6, 2025**

BETWEEN

ABDULRAHMAN MOHAMED AHMED PLAINTIFF

AND

LAMU MARINE SERVICES LIMITED 1ST DEFENDANT

SHAIBU ALI KANGA 2ND DEFENDANT

REGISTRAR OF TITLES, MOMBASA 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The hearing commenced on 29/4/2024 when the Plaintiff testified as PW1. Immediately after his testimony, his advocate Ms. Oloo sought summons to issue to the Land Registrar, Mombasa and Director of Surveys. Summons were thus issued to the Director of Surveys. The hearing was thereafter adjourned, twice for that matter, and summons extended. On 3/2/2025 when the hearing of the Plaintiff's case was to proceed, Ms. Oloo informed the court that she had filed a Motion dated 27/1/2025 which is now the subject of this ruling.
2. The motion which is sanctioned under Article 47 and 159 (2) of the Constitution, section 1A, 1B and 3A of the Civil Procedure Act and Section 146 (4) of the Evidence Act seeks the following orders: -
 1. Spent;
 2. That the Plaintiff be allowed to file a further list of documents to include the letter dated 10/7/2024 by the Director of Surveys;
 3. That the draft further list of documents dated 27/1/2025 be deemed as filed;
 4. That costs of this application be in the cause.



3. The motion is supported by an affidavit sworn by the Plaintiff on the even date and based on the following grounds: -
 1. That the Plaintiff instituted this suit against the Defendants herein vide a Plaint dated 3rd March 2023.
 2. That the parties entered appearance and filed their relevant documents.
 3. That the matter was set for pretrial and a hearing date was issued where after the hearing commenced on 29th April 2024. The matter is scheduled for further hearing of the Plaintiff's case on 3rd February 2025.
 4. That however, there is a crucial document which would assist the court reach a just finding in this case that the Plaintiff recently came across which the Plaintiff would like to add to his documents.
 5. That the said document is a letter dated 10th July 2024 by the Director of Survey to the Chief Land Registrar cancelling all survey records relating to LR. No. 12852/118 and LR. No. 12852/163 which is the 2nd Defendant's suit property on account of the said portions having been found to encroach onto LR. No. 12852/381-382 belonging to the Plaintiff herein.
 6. That the Plaintiff would like to file a Further List of Documents in order to include the new documents.
 7. That the Defendants shall suffer no prejudice as the Plaintiff's case is still ongoing and the Document will be produced by the Director of Surveys who is scheduled to testify next in the Plaintiff's case.
 8. That the Plaintiff shall suffer irreparably if the orders are not granted.
 9. That it is in the best interest of fairness and justice that the Application herein be allowed as prayed.
4. The Respondents did not file any response to the application. The court directed that the motion be heard by way of written submissions.
5. In his submissions dated 3/3/2025, the Plaintiff's counsel submitted that the application is unopposed and should be allowed as prayed. Counsel argued that the Plaintiff was not aware of the existence of the said document until recently. To counsel, the document sought to be admitted at this stage, is crucial in assisting the Court arrive at a fair and just determination. Counsel further submitted that since the director of surveys is yet to testify and produce the said document, there will be no prejudice to the Respondents if the document is admitted. To support this argument, counsel relied on the cases of P.H. Ogola Onyango t/a Pittconsult Consulting Engineers v Daniel Githegi t/a Quantalysis [2005] eKLR; and Lopusonyang v Longorenyang & 2 Others (ELC 165 of 2016) [2023] KEELC 280 (KLR).

Analysis

6. The sole issue for determination in this matter is whether the Plaintiff be allowed to file a further list of documents.



7. Dealing with a similar application as the present one in *Anne Mumbi Hinga –v- Gaitho Oil Limited* (2013) eKLR, Nyamweya J stated as follows: -

“.... I would like to add that the provisions of the Civil Procedure Rules are not cast in stone and the Court is enjoined by Article 159 of the Constitution and Sections 1A and 1B of the Civil Procedure Act to ensure that in implementing the rules we dispense substantive justice, and ensure that there is just, expeditious proportionate and affordable resolution of civil disputes. To this end, this Court is given inherent power under Section 3A of the Civil Procedure Act to make such orders as may be necessary for the ends of justice.

This Court cannot therefore prevent the Plaintiff from stating its case, even if the effect as alleged by the Defendant is to fill holes that may have arisen from cross-examination. It is the Plaintiff's right to fill such holes as she seeks substantive justice from this Court. The only limitation to the exercise of this right would be if there was prejudice to be caused to the Defendant in allowing the Plaintiff to file additional witnesses and documents. It is my view that as the Plaintiff is yet to close her case, the Defendant will have the opportunity to cross-examine any additional witnesses she calls, to recall any witnesses who have already given evidence for further cross-examination, and to file any additional statements and documents in response.....”. (emphasis mine)

8. Similarly, the court in *Steven Kariuki –v- George Mike Wanjohi & 2 Others* [2013] eKLR had this to say :-

“Once seized of the dispute, the Court is enjoined by Article 159(2) (d) of the Constitution to do substantial justice to the disputants expeditiously and without undue regard to technicalities. Rules of procedure have aptly been described as handmaidens of justice: not mistresses. See Edward Steven Mwiti –vs- Peter Irungu & 2 Others (No. 2) Nambii High Court ELC 105 of 2011(2012)eKLR. This overriding principle is a guiding beacon of the Court.

The principal aims of the overriding objective includes the need to act justly in every situation; the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the Courts by ensuring that the principle of equality of arms is maintained and that as far as it is practicable, to place the parties on equal footing.”

9. In the present matter, the Plaintiff had only called one witness and was yet to close his case. Having in mind that summons were issued to the Director Of Surveys, (the author of the document in the further list of documents), this court finds that the further List and Bundle of Documents would therefore not be prejudicial to the Defendants. The Defendants shall suffer no prejudice as they will still be able to cross-examine the author of the document listed in the Further List of Documents. In any event, the application is unopposed and I see no basis as not to grant the orders sought.
10. Accordingly, I find merit in the Plaintiff's application dated 27/1/2025. The same is allowed in terms of prayers 2 & 3. The Defendants shall file any further List and Bundle of Documents as they may deem appropriate to in response to the Plaintiff's List of documents within 7 days from today. Each party shall bear its own costs. The suit shall be mentioned on 30/4/2025 for further directions.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 6TH DAY OF MARCH 2025.



MWANGI NJOROGE
JUDGE, ELC, MALINDI

