



**Kayoyo Investment Limited v Nesclay Limited & 7 others (Environment & Land Case E006 of 2022) [2024] KEELC 751 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 751 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E006 OF 2022  
LN MBUGUA, J  
FEBRUARY 13, 2024**

**BETWEEN**

**KAYOYO INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**NESCLAY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**THE PRINCIPAL SECRETARY, LANDS & PHYSICAL  
PLANNING ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY GOVERNMENT OF NAIROBI ..... 4<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**GEEPEE GENERAL TRADING LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**SAINT BENJAMIN MEMORIAL CLINIC SUPPLIES LIMITED .... 8<sup>TH</sup>  
DEFENDANT**

**RULING**

1. This ruling relates to the objection raised by counsel for 6<sup>th</sup> and 7<sup>th</sup> defendants to the production of some of the documents which the plaintiff desires to produce as evidence.
2. The 1<sup>st</sup> witness for the Plaintiff in the counterclaim (PW1) took to the stand and gave his evidence in chief. However, counsel for the 6<sup>th</sup> and 7<sup>th</sup> defendants in the counterclaim objected to the production of the letters availed as items nos. 2-5, 9-26, 28-35 in the trial bundle of the plaintiff. It was averred that no basis has been laid for their production, and that the documents are not directly addressed to



the plaintiff company, or drawn by the plaintiff. Counsel for the 6<sup>th</sup> and 7<sup>th</sup> defendants averred that the maker of the documents ought to be called to produce the same.

3. In response, counsel for the plaintiff averred that the court conducted various pretrials in the matter culminating in the one of 27.9.2023 where it was specifically stated that production of documents would not be objected to at the trial. It was further argued that some of the documents in question relates to events of yester years that is 1970s to 1990s.
4. The counsels for the rest of the defendants (the County Government and the Attorney General) associated themselves with the sentiments of the plaintiff.
5. I have considered all the arguments raised herein in relation to the production of documents. The records of the court indicate that on 27.9.2023 the court noted that production of documents was not to be objected to during the trial. The background giving rise to this order relates to the fact that the court had duly conducted a series of pre-trials previously on 4.5.2023 and 10.7.2023.
6. The provisions of Order 11 of the Civil Procedure Rules, 2010 (as amended in 2020) provides for pre-trial conferences which are meant to *inter-alia* aid in expeditious disposal of suits. To this end, courts are mandated to uphold the objectives set out under Article 159 (2) (b) and (d) as well as Section 1A, 1B, 3 and 3A of the Civil Procedure Act by exploring expeditious ways of introducing evidence upfront. Thus the trial bundle is usually availed well in advance of the date of the trial. This means that courts are called upon to actively manage cases so as to shepherd the trial in a harmonious and speedy manner.
7. Active Case Management is one of the best practices to combat case backlog and it is anchored on the courts ability to exercise Judicial control over the legal processes with a view to ensuring that the Overriding Objective is achieved. This in turn enhances processing efficiency, promotes court control of cases, and provides judicial officers with the tools that may be used to dispose off a case efficiently. These techniques reduce delays and case backlogs, and provide information to support the strategic allocation of time and resources - all of which generally enhance quality service delivery in the Administration of justice; see Lawrence Kinyua Mwai v. Nyariginu Farmers Co. Ltd & Another [2019] eKLR (Mbugua J).
8. In order to achieve the aforementioned overriding objective, the courts adopt and implement various practice directions. To this end, the Practice Direction of this court being Gazette Notice No. 5178 dated 25.7.2014 at clause 28 (g), clearly sets out why Pretrial Directions should be conducted and provides thus;

“Taking of all objections to the production of specific documents, where notice has been issued to the other party, thereafter, objections on the production of any documents shall not be entertained at the main hearing.”

9. In the case of Virginia Kathambi Maingi v. Nicholas Mwatika & 2 others [2021] eKLR, the court had this to say in relation to Practice Directions:

“Practice Direction acts as a reflux valve to facilitate progress and avoid stagnation in resolution of disputes. Judicial resources and more specifically judicial time is finite, in view of the enormous demand for access to justice. Hence every party and or advocate who appears before court is obligated to assist the court to further the overriding objective by complying with what needs to be done at the appropriate time”.



10. The court in *Virginia Kathambi Mainigi v. Nicholas Mwatika & 2 others* (supra), cited the case of *Methuselar Keyah Lubembe vs Albina Kipkemoi* [2019] eKLR, where it was stated as follows;

“Case conference under Order 11 is a good tool for managing court files and demands time from the Judicial Officer in conduct as well as the parties or advocates to understand the file sufficiently well so that every effort and endeavor is made to save every minute by agreeing on basic and mundane issues like the number or witnesses to be called, the need for cross examination of witnesses, any questions regarding admissibility of a document and how to have the filed documents produced. This is important so that prospects of objection upon objections which many times derail progress are avoided, (Emphasize added). It is also at the period of the case conference that parties make disclosures and discoveries towards achieving fair trial devoid of ambush.”

11. Nowhere in the lifespan of the suit during the various pretrial conferences did the 6<sup>th</sup> and 7<sup>th</sup> defendants intimate that they would raise any objections to the production of any documents. No notices to that effect were ever served.

12. In the case of *Ntarangwi M’ikiara v Jackson Munyua Mutuera* [2018] eKLR, I cited the case of *Evangeline Nyegeera (suing as the legal representative of Felix M’ikiugu alias M’ikiugu Jeremiah M’Raibuni (deceased) vs Godwin Gachagua Gitbui* [2017] eKLR, where the Court of Appeal held that;

“The test for admission of evidence is relevancy..... There is need for fair determination of the dispute in the suit which may not be possible if a party is denied the opportunity to adduce relevant evidence. We hold the view that the appellant should not be barred from adducing secondary evidence through copies of the original documents. It is imperative that the nature of the documents, their number and relevance is shown. The other party will have an opportunity to cross examine on veracity and legitimacy if it be necessary”.

13. I also invoke the provisions of Article 50 (4) of the *Constitution* which stipulate that the courts have discretion to determine whether the admission of documents would be detrimental to the administration of justice.

14. Guided by the set out legal frame work and case law, I find that the objection raised by counsel for the 6<sup>th</sup> and 7<sup>th</sup> defendants is unmerited. The same is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Gichuhi for 1<sup>st</sup> Defendant

Allan Kamau for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants in main suit and 2<sup>nd</sup>, 3<sup>rd</sup> & 5<sup>th</sup> Defendant in Counter Claim

Madi for 4<sup>th</sup> Defendant in Main suit and counter claim

Court assistant: Eddel

