



**M'Laaru (Suing through his next friend Jerusha Kanario Mwenda) v Maingi & 4 others
(Environment & Land Case 325 of 2017) [2024] KEELC 587 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 325 OF 2017
CK NZILI, J
FEBRUARY 7, 2024**

BETWEEN

**SAMUEL M'IMANGI M'LAARU PLAINTIFF
SUING THROUGH HIS NEXT FRIEND JERUSHA KANARIO MWENDA**

AND

**MARTIN MURITHI MAINGI 1ST DEFENDANT
THE LAND REGISTRAR, MAUA LAND REGISTRY 2ND DEFENDANT
TABITHA KANINI MAINGI 3RD DEFENDANT
EZEKIEL MUTUTA MANYARA 4TH DEFENDANT
CECILIA MWOTIANIA MUTHANE (SUED AS THE LEGAL
REPRESENTATIVE OF THE ESTATE OF THE LATE EZEKIEL MUTUTA
MANYARA) 5TH DEFENDANT**

RULING

1. The court is asked by an application dated 30.8.2023 to allow the 5th defendant/applicant to file a further list of documents and witness statements in order to place all material evidence before the court in the best interest of justice. The grounds are contained on the face of the application and the supporting affidavit sworn by Cecilia Mwotiania Muthiane.
2. The applicant averred that he has discovered material evidence in Meru HC (ELC) No. 6 of 2008 relating to L.R No's. Njia/Cia Mwendwa/3088 & 3089 showing that the plaintiff was a proactive litigant. It was averred that such evidence needed to be placed before the court through the court administrator as it was a court record and would not prejudice the other parties. The applicant attached the same as an annexure marked EMM "1" and urged the court to find he would suffer irreparably if the said documents were not produced.



3. The plaintiff opposes the application through a replying affidavit of Jerusha Kanario Mwenda sworn on 19.10.2023. It was averred the pleadings as well as the plaintiff's case were closed in early 2023, the 1st defendant took the witness box and was only awaiting further cross-examination. She terms the leave sought after the hearing had begun as analogous to an application for leave to amend pleadings whose effect was to injure or prejudice other parties to the suit, especially after the plaintiff's case was closed. Reliance was placed on *J.C Patel v B.D Joshi* (1951) 19 EACA 42.
4. The stages and manner in which parties file pleadings, lists of witness statements and documents are governed by Order 3, Rule 2, Order 7, Rule 5 and Order 11 of the [Civil Procedure Rules](#). The purpose of full disclosure during those stages is to ensure fairness in trial and for the court to manage the way the trial would commence and end so that there is an attainment of the overriding objectives set under Sections 1A, 1B & 3 and 3A of the [Civil Procedure Act](#) and Article 50 and 159 of the [Constitution](#).
5. Order 7 Rule 5 [Civil Procedure Rules](#) provides that a defence shall be accompanied by a list of witnesses to be called at the trial, the witness statements and copies of documents to be relied upon.
6. An exception is that a statement may with leave be filed or furnished at least 15 days before the pre-trial conference under Order 11 of the [Civil Procedure Rules](#). Rule 28 of the Environment and Land Case Rules provides that in addition to Order 11 Rule 3 of the [Civil Procedure Rules](#), the court at pre-trial conference may issue summons for witnesses to attend court, produce documents or file witness statements.
7. The disclosure and service of witness statements and documents is aimed at avoiding trial or ambush by instalment. Rules of procedure and evidence aim to establish the truth, justice, fair play and avoid wasting time.
8. As to the adduction of new evidence, Munyao J in *Johana Kipkemei Too v Hellen Tum* (2014) eKLR, said a court is a shrine of justice with a mandate to do justice to all parties as expected of it under Article 159 2(d) of the [Constitution](#) and that as long as such evidence can be adduced without causing undue prejudice to the other party, the court can allow such parties an opportunity to present his case fully by considering the earlier availability of the witness and the discovery of a new document.
9. In *Alois Oceano D' Sumba v Rajnikant Narsbi Shah & another* (2017) eKLR, the court said it would be perpetuating injustice and prejudice to the plaintiff's case if it were to allow the defendant to rely on the documents filed after the plaintiff had testified and closed his case.
10. In *Mansukhalal Jesang Maru v Frank Wafula* (2021) eKLR, the court likened litigation to sea or air travel where before doors close, a signal or warning is let out for those running late and which can only re-open to admit latecomers on exceptional circumstances. The court said it had to be told where the documents were, and an explanation be given as to why they were not availed on time; otherwise, it would quit circumventing court orders during a pre-trial conference.
11. In *Concord Insurance Co. Ltd v NIC Bank Ltd* (2013) eKLR, the court cited *Kabumba v National Bank of Kenya* (2003) 2 EA 475, on the relevance of the documents and the conduct by the defendant in complying with court orders. In the *Chairman Secretary and Treasurer (suing as officials and on behalf of House of Hope v Wotta House Ltd* (2018) eKLR, the court cited with approval *Raila Odinga & 5 others v IEBC & others* (2013) eKLR, that there must be compliance with timelines where the court has to adhere to its timelines, accord fair and level playing field so that no party is overburdened or prejudiced and that to allow new evidence the court has to consider the nature context and the extent of the new material intended to be produced, but with abundance of caution especially if the plaintiff had testified with no indication that the defendant had other documents, it intended to rely on. The court said the trial had reached an advanced stage where allowing the defendant to produce



further documents would allow the respondent to make up its case at the end of the trial. The court said the mere fact that parties had a right to examine and cross-examine each other could not outweigh the prejudice to be occasioned by allowing the respondent to produce an indeterminate number of documents, which were never alluded to after the close of the plaintiff's case and after the principal defendant witness had been cross-examined.

12. In this suit, the document sought to be introduced are a court's ruling delivered on 7.7.2015. It is unclear if the 5th defendant/applicant or her late husband was party to the suit. On the other hand, the plaintiff has not denied its existence and what prejudice would be occasioned if the court referred to the ruling. The 5th defendant/applicant has not said when he discovered the suit's existence. No letter is attached to show that the 5th defendant/applicant has applied for and obtained pleadings in the referenced court file. As a son of the plaintiff, it is assumed the 5th defendant/applicant was all aware of the plaintiff's affairs concerning the suit land. The relevance of the documents to this suit other than showing the plaintiff was a perennial litigant has not been demonstrated. At the very least, the 5th defendant/applicant should have told the court the suit's outcome and how it was likely to impact his defence.
13. The 5th defendant/applicant has not met the threshold for adducing additional evidence set in *The Administrator of His Highness the Agakhan Platinum Jubilee Hospital v Munyambu* CA No. 18 of 1983 as to using reasonable diligence and the intended evidence's importance, influence or credibility. See also *Attorney General v Torino Enterprises Ltd* (2019) eKLR, *Mzee Wanje & others v A.K. Saikwa* (1982-1988) 1 KAR 462, *IEBC v Robert K Nyengi* (2015) eKLR, *John Kiplagat v Isaiah Arap Cheloget* (2016) eKLR and *Mohammed Abdi Mohammed v Ahmed Abdullahi Mohammed and others* (2018) eKLR.
14. The upshot is that I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 7TH DAY OF FEBRUARY 2024

HON. CK NZILI

JUDGE

In presence of

C.A Kananu

Mwenda for S.C Dr. Kamau Kuria for the plaintiff

Njindo for the 1st Defendant

Miss Mbaikyatta for 2nd Defendant

Thangicia for 3rd & 5th Defendant

1st – 5th defendants

