



**Ogendi v Odhiambo (Suing on Her Own Behalf and as the Legal Administrator of the Estate of Johnson Odhiambo Ogolo - Deceased) (Environmental and Land Originating Summons E002 of 2024) [2024] KEELC 5215 (KLR) (8 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5215 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**  
**ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024**  
**GMA ONGONDO, J**  
**JULY 8, 2024**

**BETWEEN**

**CASMIEL MBORI OGENDI ALIAS CASMIEL MBORI OGENDI ..... PLAINTIFF**

**AND**

**FREDRICK ONYANGO ODHIAMBO (SUING ON HER OWN BEHALF AND AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF JOHNSON ODHIAMBO OGOLO - DECEASED) ..... DEFENDANT**

**RULING**

1. This ruling is in respect of an application by Mr. Omuthe learned counsel for the defendant/applicant, Fredrick Onyango Odhiambo seeking leave of this court to file and serve an additional document namely a surveyor's report dated 16th June 2024 prepared by J. O Owino.
2. The basis of the application is that the document appears in the plaintiff's list of documents dated 1st February 2024 herein. That it be produced in the interest of justice in this suit.
3. Miss Ochwal learned counsel for the plaintiff/respondent opposed the application on the grounds thus; The document ought to have been served during discovery stage. That the prayer is an afterthought and not in line with Order 11 of the Civil Procedure Rules 2010. That the application amounts to trial by ambush. That the plaintiff abandoned the document and no notice has been issued by the defendant to produce the same.
4. So, is the application merited?
5. It is noteworthy that the report is document number 8 in the list of the plaintiff's list of documents. The same has been marked as abandoned as per the testimony of the plaintiff (PW1) in this suit which is partly heard.



6. Further, I bear in mind the essence of Order 11 (supra) and no notice has been issued to produce the document. The defendant has not advanced sufficient reason for the delay in filing and service of the document because delay defeats equity as premised in Article 10 (2) of *the Constitution* of Kenya 2010.
7. In the premises, I agree with the plaintiff's counsel that the application is an afterthought. It cannot be salvaged under Article 159 (2) (d) of *the Constitution* of Kenya 2010 which is not a mere whitewash in cases; see *Kakuta Maimai Hamisi-vs-Peris Pesi Tobiko and 2 others* (2013) eKLR.
8. The upshot is that the application is devoid of merit. The same is hereby disallowed with no order as to costs.
9. It is so ordered

**DATED AND DELIVERED AT HOMA BAY THIS 8<sup>TH</sup> DAY OF JULY 2024.**

**G. M. A ONG'ONDO**

**JUDGE**

Present;

1. Ms. W. Ochwal learned counsel for the plaintiff/respondent
2. Mr. Omuthe learned counsel for the defendant/applicant
3. T. Luanga, court assistant

