

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 334 OF 2013

MARY AUMA OOKO.....PLAINTIFF

VERSUS

ENOCK OTIENO OYUGA.....1ST DEFENDANT

ATTORNEY GENERAL (Sued on behalf of

the MINISTRY OF LANDS (Kisumu Land Registry).....2ND DEFENDANT

RULING

The plaintiff closed his case on the 1/11/2018. The matter came up for defence hearing and the DW1, Enock Otieno Obuya testified. After the testimony by DW1 Mr. Mwamu sought to file witness statements of Mr. Joseph Ouma Ochilo and Amos Juma Sibondo whose names were in the list of witnesses but had not filed statements.

Mr. Mwamu', learned counsel for the defendant argued that when he took over the case he thought that statements had been filed. He argues that the plaintiff will be prejudiced if not allowed to file statements. He refers to Article 159 of the Constitution of Kenya 2010. Mr. Onyango learned counsel for the defendant argues that the plaintiff's case was closed. The defendant will be conducting trial by ambush if allowed to file statements at this point.

I have considered the oral application and submissions and do find that allowing the application would amount to allowing the defendant to ambush the plaintiff with new evidence when the plaintiff has closed his case. Moreover, it will be highly prejudicial to the plaintiff who has already let his cat out of the bag. Moreover, there is danger of the defendant attempting the panel beat his case to counter the plaintiff's assertions and to suit his prayers.

In the case of **P.H. Ogola Onyango t/a PittsConsult Consulting Engineers vs Daniel Githegi g/a Quantalysis** [2002] eKLR Waweru J. when faced with a similar situation stated as follows: -

meant to facilitate a quick and expeditious trial of the action. Though the court no doubt has jurisdiction to allow a party to introduce a document or documents once the opposing party has closed its case. To allow him to introduce documents after the plaintiff has closed his case will occasion the plaintiff serious prejudice that cannot be cured by cross-examination. In Civil litigation there must be a level playing field. That field cannot be level were one party permitted to introduce documents in the trial after the opposite party has closed his case, and many years after pleadings closed.

It is therefore my considered view that this court would be perpetrating injustice and would prejudice the plaintiff's case if it was to allow the defendant to introduce new evidence.

The application lacks merit hence, I do dismiss the same with costs. Orders accordingly.

DATED AT KISUMU THIS 30th DAY OF APRIL, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2019.

ANTONY OMBWAYO

JUDGE