



REPUBLIC OF KENYA



**Sanghani & 4 others v Kenya National Highways Authority & 3 others (Environment & Land Case 41 of 2015) [2024] KEELC 6514 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6514 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 41 OF 2015  
SM KIBUNJA, J  
OCTOBER 9, 2024**

**BETWEEN**

**NARENDRAKUMAR KARSAN SANGHANI & 4 OTHERS ..... PLAINTIFF**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY & 3 OTHERS .... DEFENDANT**

**RULING**

1. The 1<sup>st</sup> defendant moved the court through the notice of motion dated the 7<sup>th</sup> May 2024, seeking for inter alia leave to substitute document No. 3 known as “A copy of the acquisition map known as sheet 4” appearing in its list of documents dated 29<sup>th</sup> June 2015, with “A copy of the acquisition map known as sheet 7”. The application is based on the six (6) grounds on its face and supported by the affidavit of Samuel Odoyo, Regional Senior Surveyor, sworn on the 8<sup>th</sup> May 2024, inter alia deposing that while gathering the documents to supply to the parties and court as directed on the 6<sup>th</sup> December 2023, they discovered the document sheet 4 appearing at item 3 was erroneously filed instead of sheet 7; that discovery necessitated this application, as sheet 7 is crucial to the 1<sup>st</sup> defendant’s case; that no party will be prejudiced and the application should be allowed.
2. Shreeji Enterprises [K] Limited, the 4<sup>th</sup> defendant, opposed the application through the grounds of opposition dated 29<sup>th</sup> May 2024, summarised as follows:
  - a. The application is misconceived in law and in fact, prejudicial to all parties as the plaintiffs have closed their case.
  - b. That application is an attempt to introduce evidence that has been specifically created for the trial.
  - c. That the document sought to be introduced is not an acquisition map but a super-imposed scanned copy of the unsigned original draft perimeter road created for this litigation.



3. The plaintiffs, 2<sup>nd</sup> and 3<sup>rd</sup> defendants indicated to the court on the 30<sup>th</sup> May 2024 through counsel that they had no objection to the 1<sup>st</sup> defendant's application being allowed. The learned counsel for the 1<sup>st</sup> defendant and 4<sup>th</sup> defendant made their oral submissions for and against the application on that same day, which the court has considered.
4. The issues for determinations on the 1<sup>st</sup> defendant's notice of motion are as follows:
  - a. Whether the 1<sup>st</sup> defendant has made a reasonable case for the substitution of the document.
  - b. Whether to allow the application will be prejudicial to any party's case/defence.
  - c. Who pays the costs.
5. The court has carefully considered the grounds on the application and of opposition, oral submissions by the two learned counsel, the record and come to the following findings:
  - a. That it is a fact that the application was filed 13<sup>th</sup> May 2024, which was about five (5) months after the plaintiffs closed their case on the 6<sup>th</sup> December 2023. That as posited by the 4<sup>th</sup> defendant's in one of its grounds of opposition, the pre-trial had by then been done and closed.
  - b. That though through its grounds of opposition, the 4<sup>th</sup> defendant appeared to be wholly opposed to the application, what the court gathered from their counsel's submissions is that it will be seeking for the original document to be availed during the hearing. Filing of a document or substituting a filed document with another does not mean the document has been admitted as an exhibit or that its contents has been produced as evidence. Production of documents filed as exhibits and proof thereof of its contents as evidence is dealt with through the hearing process guided by the applicable rules of evidence.
  - c. Though the court finds the substitution of the document is not opposed, it is only fair the other parties be given an opportunity to file and serve further lists of document in response thereto, and for the plaintiffs' case to be reopened should they so desire, to present additional evidence if any, limited to the content of the newly introduced document(s).
  - d. That as the instant application became necessary because of the 1<sup>st</sup> defendant's own failure to have filed the document in time, it will bear the costs thereof, the provision of section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya notwithstanding.
6. Flowing from the foregoing determinations, the court finds and orders as follows:
  - a. That the application dated the 7<sup>th</sup> May 2024 is hereby granted and 1<sup>st</sup> defendant is allowed to file and serve the substituted document with fourteen (14) days.
  - b. The plaintiffs, 2<sup>nd</sup> to 4<sup>th</sup> defendants granted corresponding leave after service to file and serve further list of document limited to responding to the contents thereof.
  - c. That the plaintiffs be at liberty to tender additional evidence limited to the additional documents filed.
  - d. The 1<sup>st</sup> defendant to bear the costs in the application.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2024.**

**S. M. KIBUNJA, J.**



**ELC MOMBASA.**

IN THE PRESENCE OF:

PLAINTIFFS : Mr. Chamwanda

DEFENDANTS : M/s Olundo for 1<sup>st</sup> Defendant

M/s Kiti for the 2<sup>nd</sup> Defendant

Mr. Muinde for 3<sup>rd</sup> Defendant

Mr. Ondego for 4<sup>th</sup> Defendant

COURT ASSISTANT – LEAKEY.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

