



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1180 OF 2015

MUVOKANZA LIMITED.....PLAINTIFF

VERSUS

NEDMART FALLS KENYA LIMITED.....1ST DEFENDANT

SYLVESTER KYALO MUTUA.....2ND DEFENDANT

JAMII BORA BANK LIMITED.....3RD DEFENDANT

MUGANDA WASULA T/A

KEYSIAN AUCTIONEERS.....4TH DEFENDANT

THE CHIEF REGISTRAR OF TITLES.....5TH DEFENDANT

DIRECTIONS

1. Mr. Motari for the 5th defendant raises an objection to the Land Registrar being called as a witness by the plaintiff. The grounds are that the 5th defendant is a party to these proceedings who has filed a defence and bundles of documents. Mr. Motari's submissions have been adopted by Mr. Rapando, Mr. Awuor and Mr. Akello for the 1st, 2nd and 3rd defendants respectively.

2. Mr. Omondi for the plaintiff opposes the objection on the grounds that the Land Registrar is the best person to produce the documents supplied to the plaintiff by that office and identified by P.W.2 (Mumo Mwendwa).

3. I have considered the rival submissions. The issue is whether this objection is merited.

4. On the 29th September 2020, Gildad Karani, a Land Registrar attached to the office of the Chief Land Registrar was put on the witness stand. She had attended court pursuant to summons dated 3rd September 2020. She did not complete her testimony owing to the objection by counsel for the defendants that she had not recorded a witness statement. Due to this objection, the court directed the witness to be stood down so that she could record a witness statement on the documents to be produced. Consequently, leave was granted to the plaintiff to file the said witness statement and an additional list of documents.

5. These directions were given in the presence of all advocates. The same have not been set aside and/or reviewed. The instant objection is misplaced and the same is overruled. The plaintiff has not closed its case. It should be given an opportunity to present its case in the best way possible.

6. The Land Registrar should testify and produce the documents stated on the summons dated 3rd September 2020. No prejudice will be occasioned to the defendants as they will have an opportunity to cross examine the witness.

7. I find no merit in the objection by the 5th defendant and the same is dismissed.

It is so ordered.

Dated, signed and delivered in Nairobi on this 15th day of April 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Omondi for the Plaintiff

Mr. Rapando for the 1st Defendant and holding brief for Mr. Awuor for the 2nd Defendant

No appearance for the 3rd, 4th and 5th Defendants

Phyllis Court Assistant.