



**Mabachi & 2 others v Land Registrar, Busia & 2 others (Environment & Land
Case 28 of 2015) [2023] KEELC 20362 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20362 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 28 OF 2015**

BN OLAO, J

OCTOBER 5, 2023

BETWEEN

LUCAS OUMA MABACHI 1ST PLAINTIFF

HENRY GABRIEL MABACHI 2ND PLAINTIFF

MASIGA OKUMU JAMES LEMMY 3RD PLAINTIFF

AND

THE LAND REGISTRAR, BUSIA 1ST DEFENDANT

THE HON. ATTORNEY GENERAL 2ND DEFENDANT

BENJAMIN OKELLO SEMBE 3RD DEFENDANT

RULING

1. In the course of the trial this morning, Ms Nabulindo counsel for the Plaintiff asked the Court to expunge the statement of the 3rd Defendant as well as his documentary evidence which had only been filed yesterday October 4, 2023. She stated that they have been filed long after the pleadings had closed.
2. Mr Jumba counsel for the 3rd Defendant conceded that indeed the 3rd Defendant's statement and documents had only been filed on October 4, 2023. He however added that this is because the parties have other cases in this Court and there was an error in filing them in this case. That expunging them will cause an injustice to the 3rd Defendant.
3. It is true that pleadings were long closed and infact the Plaintiff has already testified and closed his case earlier to-day. Mr Jumba has explained the cause of the misfiling of the statement and documents by the 3rd Defendant. I do not know how this lapse was misled by the parties during the pre-trial held on May 8, 2020 although I notice that Ms Nabulindo was not in Court on that day. Mr Onsongo who is seized of the matter ought to have raised it when the parties appeared before Hon Madowo Deputy Registrar for the pre-trial.



4. Having said so, it is on record that Ms Nabulindo has proceeded to prosecute the Plaintiffs case knowing all along that the 3rd Defendant filed his statement and documents on October 4, 2023. Indeed she was served with the same and so they are not strange documents. The Plaintiff has not therefore been prejudiced and this Court is enjoined to do substantive justice to the parties.
5. In the circumstances I will not expunge the statement of the 3rd Defendant and documents. I rule that they are properly on record and served. The 3rd Defendant will however meet today's costs of the Plaintiff assessed at Kshs.5,000 payable before the next hearing date which is November 9, 2023.

BOAZ N. OLAO

JUDGE

5TH OCTOBER 2023

Ruling dated, signed and delivered in open court this 5th day of October 2023.

Ms Nabulindo for Plaintiff present

Mr Jumba for 3rd Defendant present

1st and 2nd Defendants – absent

Ajwang – Court Assistant

BOAZ N. OLAO

JUDGE

5TH OCTOBER 2023

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