



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1408 OF 2013

HIRAM NGUGI THIMBA.....1ST PLAINTIFF

JOHN KAMAU MUNGAL.....2ND PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....DEFENDANT

RULING

1. This matter was listed for hearing on 8.12.2021 when defence counsel raised an objection to production of the NEMA report on the basis that the same was served upon them just few days earlier on 6.12.2021. Plaintiff's Counsel defended the move of availing the report at this stage averring that the report had not been ready but it was listed as item No. 12 in their bundle.

2. I have considered all the arguments advanced herein. I have also perused the record. In the case of **Isiolo Stage View Enterprises v Isiolo County Governemnt & 2 Others (2018)eKLR**, I stated thus;

“The purpose of giving timelines of events is not geared towards locking out evidence. Further, it must be noted that documents filed outside the given timelines are not necessarily invalidated by non-compliance, unless there is an express order to that effect. The documents can be admitted by the court if a basis is laid for their admission.....

The court also has a constitutional mandate to ensure that cases are heard expeditiously. Article 159 (2) (b) of the constitution states that “justice shall not be delayed.....

The ultimate goal is to dispense substantive justice”

3. In **Esther Wambui Njengo v Harrison Mwangi Nyota &2 Others (2018) eKLR**, **Munyao J** stated that;

“Strictly speaking therefore, parties are supposed to avail their evidence in advance, before the commencement of trial. The purpose of these provisions is to prevent a litigant from continuing with the suit, without the knowledge of what evidence the other party intends to bring, and are aimed at preventing trial by ambush. However, these are trial directions in subsidiary legislation and it should not be forgotten that under Article 159 (2) (d) of the Constitution, the court is enjoined to ensure that justice is not sacrificed at the altar of procedural technicalities. The court does indeed have discretion in the interests of justice, to allow a party to rely on documents or statements which had not been discovered before. At the end of the day, the court has to weigh where the scales of justice tilt. Generally though, the more advanced the litigation, the more difficult it may be for the court to allow a party to introduce documents and new witnesses to the suit” .

4. In the instant suit, the Plaintiff's Case is yet to be closed, thus the defence has an opportunity to challenge the said document on the platform of cross-examination. To this end, the defence is at liberty to recall any of the Plaintiff's witnesses for such cross-examination.

5. Further, it is not lost to this court that the said report is already itemized as No. 12 in Plaintiff's list of documents dated 13.3.2018. Thus the intention to rely on such a report had been expressed by the Plaintiff much earlier in the year 2018. I have also come across the ruling of this court dated 29.10.2014 in which NEMA has been mentioned.

6. In light of the foregoing analysis, I find that the objection is not merited and the same is hereby dismissed. The report can be adduced subject to cross-examination of any of the Plaintiff's witnesses on the said report.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ochieng holding brief for Mungai for the Plaintiff

Court Assistant: Eddel Barasa