



Mayon (Suing as the legal representative of the Estate of Sagindi ole Ndentuka) v Mwai & 4 others (Environment and Land Case Civil Suit 51 of 2018) [2022] KEELC 2866 (KLR) (4 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2866 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 51 OF 2018
MN GICHERU, J
MAY 4, 2022

BETWEEN

JOSEPH SILEMI MAYON (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SAGINDI OLE NDENTUKA) PLAINTIFF

AND

ANTHONY MWANIKI MWAI 1ST DEFENDANT
WILLIAM KOIPITAT MAYON 2ND DEFENDANT
PAUL MUSAU MWANGANGI 3RD DEFENDANT
COUNTY LAND REGISTRAR, KAJIADO 4TH DEFENDANT
EQUITY BANK LIMITED 5TH DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated 1st December, 2021. The said motion which is under Sections 1A, 1B (a), 3, 3A and 63 (e) of the *Civil Procedure Act*, Order 51 Rule 1 Civil Procedure Rules and all enabling provisions of the law seeks leave to the Plaintiff to file and serve a supplementary list of documents which contains an amended grant only. It also seeks to have the Plaintiff recalled to produce it in evidence.
2. The grounds for seeking the order are that the Applicant forgot to include the said grant as part of his evidence.
3. The application is supported by an affidavit sworn by the Applicant in which he explains the mistake which he did not discover until he testified in Court on 18/11/2021.



4. The application is opposed by the 5th Defendant whose counsel has filed grounds of opposition dated 18/2/2022. The grounds include a statement that the Applicant is only seeking to seal loopholes exposed in cross-examination and his sole intention is to surprise and ambush the Defendant and also to delay the trial and increase costs contrary to the overriding objective of the Civil Procedure Act and Rules.
5. I have carefully considered the application in its entirety including the affidavit, annexures and grounds of opposition.
6. I find that it is neither fair nor just to lock out evidence that could assist the Court in arriving at a fair determination of the dispute. A fair hearing as envisaged under Article 50(1) of the Constitution is one where a mistake or error should not be allowed to derail the course of justice especially when the other party will be given a chance to cross-examine on the new evidence and also to file evidence in rebuttal.
7. For the above reasons, I allow the Notice of Motion dated 1st December, 2021. I grant leave to the 5th Defendant to file any evidence in rebuttal if they so wish, in the next 7 days. Hearing as scheduled on 17/5/2022.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4TH DAY OF MAY, 2022.

M.N. GICHERU

JUDGE

