

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 914 OF 2017

HUSSEIN MOHAMED HAJI.....PLAINTIFF

VERSUS

GEORGE NGURE KARIUKI.....1ST DEFENDANT

THE LAND REGISTRAR, KAJIADO NORTH.....2ND DEFENDANT

RULING

What is before court for determination is the Plaintiff's Counsel objection made on 4th March, 2021 to the 1st Defendant's production of a Bundle of Documents dated the 1st March, 2021 which he filed without leave of court. The Plaintiff's Counsel insist the 1st Defendant was only granted leave to file a witness statement but has proceeded to file documents which he seeks to rely on. Further, that the Plaintiff had already closed his case and the 1st Defendant also testified. He sought for the documents to be expunged from court record. The 1st Defendant's counsel contended that even if the documents were filed without leave of court, they should be allowed. She insisted the 1st Defendant would be prejudiced if the said documents were not produced. To buttress her averments, she relied on Article 159 of the Constitution. The Plaintiff's Counsel in response insisted that Article 159 of the Constitution was not relevant as the 1st Defendant was only granted leave to file a witness statement. To support his averments, he relied on the Supreme Court Petition No. 1 of 2013 where it was held that Rules of Court must be adhered to.

Upon consideration of the Objection including the respective submissions, the only issue for determination is whether the 1st Defendant's List and Bundle of Documents dated the 1st March, 2021 should be produced as exhibits.

I note on the 8th December, 2020, the 1st Defendant was only granted leave of 14 days to file and serve a Witness Statement. I note he proceeded to file a witness statement including a List and Bundle of Documents on 4th March, 2021 which was more than two months later. The 1st Defendant has sought to rely on Article 159 of the Constitution so as to be allowed to produce the said documents as exhibits. From the court records, the Plaintiff closed his case on the 17th September, 2020, on which date the 1st Defendant also testified. I note on 20th June, 2018, a Counsel Mr. Iranga, representing the 1st Defendant confirmed that all parties had complied with Order 11 of the Civil Procedure Rules and sought for a hearing date.

I have had a chance to peruse the provisions of Order 11 of the Civil Procedure Rules which deals with pre-trial directions and conferences. Further, upon compliance with Order 11 of the Civil Procedure Rules, a matter is certified ready for hearing and parties are expected to proceed to fix a suit for hearing. In the case of **Raila Odinga & 5 Others v Independent Electoral and Boundaries commission & 3 others [2013] eKLR** the Supreme Court held that: **'Notwithstanding such considerations of merit, which led the Court to exclude belatedly-introduced papers, counsel argued on the basis of Article 159(2)(d) of the Constitution, which thus provides: "In exercising judicial authority, the courts and tribunals shall be guided by the following principles – ... (d) justice shall be administered without undue regard to procedural technicalities...."**

The essence of that provision is that a Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone and which suits all situations of dispute resolution. On the contrary, the Court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case, and conscientiously determine the best course. The time-lines for the lodgement of evidence, in a case such as this, the scheme of which is well laid-out in the Constitution, were in our view, most material to the opportunity to accord the parties a fair hearing, and to dispose of the grievances in a judicial manner. Moreover, the Constitution, for purposes of interpretation, must be read as one whole: and in this regard, the terms of Article 159(2)(d) are not to be held to apply in a manner that ousts the provisions of Article 140, as regards the fourteen-day limit within which a petition challenging the election of a President is to be heard and determined.'

Based on the facts before me while relying on this decision, I find that the 1st Defendant had indeed been granted time to comply with Order 11 of the Civil Procedure Rules which he confirmed he did. The Counsel even sought for a hearing date. I opine that Article 159 of the Constitution which the 1st Defendant seeks to rely on cannot be a cure for all ills whenever a party fails to comply with the rules of procedure as well as timelines set by the court. Insofar as the 1st Defendant had already filed his List and Bundle of Documents dated the 1st March, 2021 without leave, I will decline to allow the same to be produced as an exhibit as it will be prejudicial to the Plaintiff who had already closed his case without being granted a chance to peruse the same.

In the circumstance, I will uphold the objection by the Plaintiff's Counsel made on 4th March, 2021.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF MAY, 2021

CHRISTINE OCHIENG

JUDGE