



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Samwel Muiruri Nganga - Deceased (Succession Cause  
88 of 2013) [2023] KEHC 1373 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1373 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 88 OF 2013  
RN NYAKUNDI, J  
MARCH 1, 2023**

**BETWEEN**

**CHARLES MBUGUA MUIRURI ..... OBJECTOR**

**AND**

**ZIPPORAH NJOKI MUIRURI ..... PETITIONER**

**RULING**

1. The applicant herein sought an adjournment to file more witness statements. Keeping in mind that both parties had closed their cases, it is my view that the same would not be in the interest of justice as it will be tantamount to allowing the applicant to steal a march on the respondent. Further, it will be an infringement on the right to a fair hearing as provided by article 50(1) of the *Constitution* as it will be an ambush on the respondent who will be required to respond, and as a result this will then open up the closed cases of both parties once more.
2. The applicant was given an opportunity to be heard and he presented the witnesses and statements he opined would best suit his case. Considering the age of the matter, it is my considered view that allowing an adjournment, more so for the reasons sought would be unjust. The applicant has not laid a basis for the orders sought to issue and his conduct is a complete negation of the overriding objective of the law of attaining an expeditious, affordable, proportionate and just disposal of dispute.
3. In *Chairman, Secretary & Treasurer suing as the officials/on behalf of House of Hope v Wotta – House Limited [2018] eKLR* it was held;

' Even after the pre-trial conference, the court has the power to allow the parties to call further witnesses or produce further documents. This power, encapsulated in the provisions of order 18 rule 10 of the Rules and section 146 of the *Evidence Act*, is intended to ensure that each party is afforded a fair trial guaranteed under article 50 (1) of the *Constitution*. But a fair trial does not exist in a vacuum, it is governed by rules which by themselves ensure that each



party is given the opportunity to present or defend his case fairly. What these rules must not do is to become an end in themselves and impede a fair trial and that is why article 159(2) (b) of the Constitution provides that justice shall be administered without undue regard to technicalities. The constitutional imperatives are further supplemented by the overriding objective enacted in sections 1A and 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya).

4. Whereas the right to be heard is enshrined in the Constitution it is apposite that the same be implemented keeping in mind that litigation must come to an end. In the premises, upon considering the circumstances I find that I cannot allow the applicants prayer to file the witness statements at this juncture.

**DELIVERED, DATED AND SIGNED ON THIS 1<sup>ST</sup> DAY OF MARCH 2023**

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**R.NYAKUNDI**

**JUDGE**

