



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC. CASE NO. 56 OF 2019**

**ETHICS AND ANTI-CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**KENNEDY OBWA.....1<sup>ST</sup> DEFENDANT**

**GINTU HOLDINGS LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

Mr. Kosgey Robert Bii, advocate for the Plaintiff has sought an order that the plaintiff be allowed to call addition witnesses to enable him propagate the plaintiff's case better. He relies on Section 1A, 1B, 3A and 22 and 23 of Civil Procedure Act. The reason for the application is that there is need to establish how the suit parcel came into possession of the school. The plaintiff wants to call Rajni Somaia Esquire and Hon. Olago Aluoch, Collins Otieno, Mr. Norman Ondego and to recall Mr. Nyangweso.

Mr. Ouma Carlos Advocate for Defendants opposes the application as it appears the plaintiff is prosecuting his case on emerging issues. They have been before this court several times and that the plaintiff was given 14 days to file documents and that there has been no indication by the plaintiff that more witnesses will be called. The preliminaries that were required to be done were done. The plaintiff has lined 8 witnesses and that the investigating officer has been sitting in court throughout the hearing.

The question of the necessity and importance of pre- trial has been explained in **Halsbury's Laws of England Volume 13** where it was stated that *the function of the discovery of documents is to provide the parties with relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to sit before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation. Witness statements are to be filed with the pleading so as not to ambush the other party. However, the court has a discretion to allow a party to file a further list of witnesses even after trial has commenced so long as it will not delay the hearing of the matter and that the other party will not be prejudiced*

I have considered the application and rival submissions and do find that this is a matter of public interest involving the Victoria Primary School, Parents Association Victoria Primary School and a prime land that is alleged to be public land. There is need to consider all available evidence before making a just determination. The Defendants will not be prejudiced because they have not testified and will be allowed to respond to any allegation in the further statement. I do allow the plaintiffs application to call more witnesses but limited to Rajni Somaia who was mentioned as a registered trustee of the Parents Association of Victoria Primary School and Mr Olago Aluoch an alleged former chairman of the school Committee as it then was. The witness statements to be filed within 15 days from now and the defendants be at liberty to file further witness statements and documents. I do further order that Mr George Nyangweso be recalled. Costs in the cause. The matter to be mentioned in the month of January 2022.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 6<sup>th</sup> DAY OF DECEMBER, 2021.**

**ANTONY OMBWAYO**

**JUDGE**

*This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*

**ANTONY OMBWAYO**

**JUDGE**