

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 60 OF 2011

M'MWONGERA MIRURI.....PLAINTIFF

VERSUS

NANCY KANUGU MBAYA

(Legal representative of Ayubu Mbaya Mwongera – deceased).....1ST DEFENDANT

PATRICK MBARA RUSHA.....2ND DEFENDANT

MBAABU SILAS M'IKIARA.....3RD DEFENDANT

FESTUS MBAABU NGARUTHI.....4TH DEFENDANT

MBOBUA M'MWONGERA.....5TH DEFENDANT

RULING

1. This ruling is in respect of the application orally made by defence counsel to have the bundle of documents filed on 24.1.2020 expunged from the record. It has been argued for the defence that the documents were filed outside the given timelines.

2. In response it was argued for the plaintiff that the documents were in another record of a Court of Appeal matter, that the documents are not strange as they were also availed in Nairobi case No. 2319 of 1984, and that some documents are from the firm of Gatari Ringera advocates and Mithiga and Kariuki advocates. Another document is from defendant to plaintiff while others are copies of green cards.

3. The issue of filing documents is anchored on the principle of what amounts to a fair trial is. In the case of **Johana Kipkemboi vs. Hellen Tum ELC NAIROBI NO. 975 OF 2012, Judge Munyao Sila** held that in terms of Article 50 of the constitution, a trial would not be fair if a party was allowed to hide evidence and ambush the other party. In that case, the court disallowed the defence to avail additional witnesses and documents because the plaintiff's case had been closed. In the case of **Essanji and Another vs. Solanki (1968) EA at 224**, the court stated that;

“The administration of justice should normally require that the substance of all disputes be investigated and decided on merits and that errors should not necessarily deter a litigant from the pursuits of his rights.”

4. I have considered that the trial has not kicked off, and that plaintiff delayed in filing their documents in less than one month as they were supposed to file the documents by 27.12.2019. In the circumstances, the documents filed on 24.1.2020 are taken to be properly on record with a rider that plaintiff shall not file any further documents.

5. Defendant on the other hand is at liberty to file any other documents within a period of one month from date of delivery of this ruling.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH FEBRUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Gatari R. for defendant

HON. LUCY. N. MBUGUA

ELC JUDGE