



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT EMBU

E.L.C. CASE NO. 224 OF 2014

FORMERLY KERUGOYA ELC 820 OF 2014

MERCY NJERI NYAGA.....1ST PLAINTIFF

SAMWEL MUNYI NYAGA.....2ND PLAINTIFF

(Suing as Legal Representatives of the Estate of NYAGA MUNYI.....(DECEASED))

VERSUS

ERASTUS NJUE GITANGUTHI.....1ST DEFENDANT

JUSTUS GATUMUTA.....2ND DEFENDANT

THE PRESBYTERIAN FOUNDATION.....3RD DEFENDANT

RULING

1. By a notice of motion dated 6th January 2020 expressed to be brought under **Sections 1A & 1B of the Civil Procedure Act (Cap. 21) and Order 51 Rule 1** of the **Civil Procedure Rules**, the Defendants sought leave to reopen the defence case in order to produce copies of letters of consent from the Land Control Board with respect to *Title Nos. Ngandori/Kiriari/3208 & 3209*.
2. The said application was based upon the grounds set out in the notice of motion and the supporting affidavit sworn by the 1st Defendant on 6th January 2020. The gist of the Defendants' application was that they were unable to obtain copies of the consent letters from the Lands Office on time hence by the time they were made available the suit had already been heard. The Defendants also filed a further affidavit sworn by their advocate on 28th January 2020 annexing a copy of the transfer form for *Title No. Ngandori/Kiriari/3210* which they intended to produce in this suit.
3. The Plaintiffs filed a replying affidavit sworn by the 1st Plaintiff on 21st January 2020 in opposition to the said application. It was contended, *inter alia*, that the Defendants had sufficient time to obtain the documents sought to be produced; that the additional documents would not alter the outcome of the suit; that a further delay would be occasioned if the application was allowed; and that the additional evidence would be prejudicial to them if admitted.
4. When the said application was listed for hearing on 5th February 2020 it was canvassed orally by the parties and the ruling deferred to 13th February 2020.
5. The court has considered the Defendants' said application, the Plaintiffs' replying affidavit in opposition thereto and the entire material on record. The court has noted that the question of whether or not the consent of the Land Control Board was obtained for the impugned transactions was canvassed at the trial. The Plaintiffs challenged the Defendants to produce them but the latter were unable to do so since the consent letters were not available then. It is not clear why the Plaintiffs are opposing the intended production of the consents when they had earlier on challenged the Defendants to produce them.
6. There is no material on record to demonstrate that the Defendants' said application is merely intended to delay the conclusion of the suit. It is still possible for the additional evidence to be received before the scheduled date of judgment. There is equally no demonstration that the Plaintiffs would suffer any prejudice if the consent letters from the Land Control Board are admitted in evidence. The Plaintiffs shall be accorded an opportunity to cross-examine the Defendants on those letters and, if need be, to adduce evidence in rebuttal. The court is satisfied that the documents sought to be produced are relevant to the matters in dispute herein hence they may assist the court in arriving at a

just decision. The court is also of the opinion that Defendants' explanation for their failure to produce those documents at the trial is not unreasonable.

7. The upshot of the foregoing is that the court finds merit in the Defendants' notice of motion dated 6th January 2020. Accordingly, the court makes the following orders for disposal thereof:

a) Leave be and is hereby granted to the Defendants to re-open their case for the purpose of producing the letters of consent for Title Nos. Ngandori/Kiriari/3208 & 3209 and Transfer form for Title No. Ngandori/Kiriari/3210.

b) The Plaintiffs shall be at liberty to cross examine the Defendants on the said documents and to call for evidence in rebuttal.

c) Costs of the application shall be in the cause.

8. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 13TH DAY of FEBRUARY, 2020

In the presence of both the 1st & 2nd Plaintiff and Ms. Kithaka holding brief for Ms. Ndorongo for the Defendants.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

13.02.2020