



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO.660 OF 2002**

**SAMUEL O. TIMA.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**LYDIA NYAMBONYI.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**HOUSING FINANCE COMPANY OF KENYA.....1<sup>ST</sup> DEFENDANT**

**JOSEPH KARIUKI WANYUGI.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING AND DIRECTIONS**

Mr. Kyengo Counsel acting for the Plaintiff has made an oral application seeking to have the Plaintiff recalled to testify in order to produce certain documents. The application was strenuously opposed by Counsel for the Defendant.

This is a matter in which the hearing commenced before **Hon. Lady Justice Sewe**. After many false starts the Plaintiff eventually testified in court on **21<sup>st</sup> February 2018**. The Plaintiff concluded his testimony and was duly cross-examined by defence Counsel and re-examined by his Advocate. A second witness testified on behalf of the Plaintiff on **20<sup>th</sup> April 2018**. That witness was also duly cross-examined by defence counsel and re-examined.

At this point **Justice Sewe** was transferred to **Eldoret High Court** and this Court took over the matter. On **14<sup>th</sup> May 2019** counsel for the Plaintiff applied and was granted leave to cease acting for the Plaintiff. Vide a Notice of Change of Advocates dated **25<sup>th</sup> June 2019**. **Mr. Kyengo** then came on record for the Plaintiff. On **28<sup>th</sup> June 2019** **Mr Kyengo** applied for and obtained from the Court leave to do the following:-

- (i) Amend the Plaintiff
- (ii) File a Supplementary bundle of Documents
- (iii) File additional witness statements.

On **28<sup>th</sup> November 2019** when the matter was slated for hearing Counsel for the Plaintiff sought to re-call the Plaintiff to testify. This application is being made almost ten (10) months after the Plaintiff first gave his evidence. I have carefully perused the court file. I note that the Plaintiff has severally sought adjournments which have caused delay in the hearing of this suit. On **14<sup>th</sup> May 2019** when the matter was scheduled for hearing the Plaintiff abruptly decided to relieve his advocate of instructions on basis that he had no confidence in said Counsel. The Court did on that day express its misgivings about the antics of the Plaintiff. I cannot help but suspect that the present application amounts to a further attempt by the Plaintiff to delay the hearing and determination of this suit. This is a very old 2002 matter. The court has already bent over backwards in order to accommodate the various applications made by the Plaintiff. Although this court recognizes and upholds the right of a Plaintiff to be represented by counsel of his choice, this right ought not be abused to disrupt and delay the conclusion of a suit. The court has an obligation to ensure the fair and expeditious conclusion of all matters before it. The Plaintiff's advocate has already amended the Plaintiff and filed fresh documents and witness statements, in line with the leave granted by this court.

In my view this application to re-call the Plaintiff comes too late in the day. It is merely an abuse of Court process as it would effectively mean that the court is being asked to start the matter denovo which runs contra to the court directions of **4<sup>th</sup> July 2018** that the hearing proceed from where it had stopped.

In the premises I decline to allow the application to have the Plaintiff re-called to testify. The matter will proceed for hearing, the Plaintiff shall call their remaining witnesses and thereafter close its case. It is so ordered.

**Dated in Nairobi this ...2<sup>nd</sup> ..day of December, 2019.**

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**Justice Maureen A. Odera**