



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 29 OF 2019

ABDI NOOR UMARPLAINTIFF

VERSUS

ADAN MAMO ELEMA AND 22 OTHERSDEFENDANT

RULING

1. This matter emanated from Isiolo as Isiolo CMCC No 5 of 2013 vide a miscellaneous application no. 12 of 2018 where a ruling was delivered on 15.3.2019 and the lower court file was transferred to this court. Counsel for the parties have been advancing various arguments prompting this court to give directions on 26.2.2020 requesting the counsels to set out a concise summary of the issues they desire this court to determine. Mr. Ashaba counsel for the plaintiff informed the court that the issues pending for determination are on:

- i. Jurisdiction
- ii. The preliminary objection dated 29.8.2017.

Jurisdiction

2. The issue of jurisdiction was dealt with in the miscellaneous file no. 12 of 2018 hence I will not belabor on this point anymore.

Preliminary objection dated 29.8.2017

3. The preliminary objection was filed when the matter was before the trial magistrate but was not dealt with. The defendants want the court to strike out plaintiff’s documents filed on 1.8.2017 as the same were filed without leave of court and in violation of the rules of procedure.

4. In the case of **Evangeline Nyegera (suing as the legal representative of Felix M’ikiugu alias M’ikiugu Jeremiah M’Raibuni (deceased) vs Godwin Gachagua Githui Court of Appeal Civil Appeal No. 28 of 2016**, it was held that:

“The test for admission of evidence is relevancy.....there is need for fair determination of the dispute in the suit which may not be possible if a party is denied an opportunity to adduce relevant evidence..... The other party will have an opportunity to cross examine on veracity and legitimacy if it be necessary”.

5. In the case of **Esther Wambui Njenga vs Harrison Mwangi Nyota & 2 others (2018) eKLR**, the court was dealing with an objection raised in respect of documents filed outside the timelines. The court stated thus;

“Strictly speaking therefore parties are supposed to avail their evidence in advance, before the commencement of the trial. The purpose of these provisions is to prevent a litigant from continuing with the suit without knowledge of what evidence the other party intends to bring and are aimed at preventing trial by ambush. However, those are trial directions in subsidiary legislation and it should not be forgotten that under Article 159 (2) (d) of the constitution, the court is enjoined to ensure that justice is not sacrificed at the altar of procedural technicalities. The court does indeed have discretion in the interest of justice to allow a party to rely on documents or statements which had not been discovered before. At the end of the day the court has to weigh where the scales of justice tilt. Generally though, the more advanced the litigation, the more difficult it may be for the court to allow a party to introduce documents and new witnesses to the suit.....”.

6. Time and again, I have emphasized that the main purpose of having timelines of events in the lifespan of a suit including filing of documents is to achieve the overriding objectives set out in the civil procedure act. See **Meru ELC Petition 14 of 2017 Isiolo stage**

viewers' enterprises vs Isiolo county government & 2 others. In the present suit, the matter is freshly before me and the court is yet to give directions on the hearing of the suit. Taking cue from the cited case law, I find that it would not be proper to strike out the list of documents. If anything, I now proceed to allow all the parties to file any further documents and serve the same upon the opponent within a period of 45 days from the date of delivery of this ruling. The documents shall be availed in form of a bundle in a chronological order with every page bearing a number but the said bundle should contain a cover page containing the summary of the documents.

7. I note that defendants had filed an application dated 6.11.2017 whose contents are similar to the preliminary objection herein. Both that application and the preliminary objection dated 29.8.2017 are dismissed with no orders as to costs.

8.m I am encouraging the parties to embrace the overriding objectives set out in the civil procedure act so as to have a speedy hearing in this matter. To this end, the parties are encouraged to abandon any maneuvers of derailing the suit further through applications and preliminary objections.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF MAY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE