



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 63 OF 2007**

**CHARLES ANTONY ONDIEK .....1ST APPLICANT**

**ESAYA OYOO WARIRO .....2ND APPLICANT**

**WILLIAM ODHIAMBO WARIERO .....3RD APPLICANT**

**VITALIS OTIENO WARIERO .....4TH APPLICANT**

**VERSUS**

**THOMAS ODHIAMBO NYONJE .....1ST RESPONDENT**

**GIDEON OKECH RAYOLA .....2ND RESPONDENT**

**STEPHEN NYANJWA OTIENO .....3RD RESPONDENT**

**WILLIAM KWAME OTIENO .....4TH RESPONDENT**

**EVALYNE ACHIENG OKOTH .....5TH RESPONDENT**

**EMANUEL OTIENO ONYNGO .....6TH RESPONDENT**

**REGISTRAR OF LANDS KISUMU .....7TH RESPONDENT**

**RULING**

By their application dated 10/1/2017 the plaintiffs/applicants pray that;

- a) The Honourable court be pleased to reopen the plaintiffs case.**
- b) The reopening be only limited to admission of documents by the Registrar of Lands Kisumu which were marked for identification as MFI 1-80 contained in schedule two of the plaintiff list of documents dated 22/10/201 and filed on 27/10/2010.**

The application is supported by the affidavit of Anthony T. Oluoch the plaintiff's counsel. He argued that after closing the plaintiff's case he expected that the defendants were going to call the land Registrar as a witness so that he could produced the documents which the plaintiffs had marked. Apparently the defendants indicated that they were not going to do so.

The defendants on their part have submitted that the applicant has come too late in the day and that the same is solely meant to delay the fast conclusion of this case. That it was the mistake of the plaintiff's

advocate not to call the Land Registrar and thus the said witness would simply fill the gaps on behalf of the plaintiffs.

Having read the parties submissions as well as the numerous authorities on record, the basic argument is whether the reopening of the plaintiffs case and calling of the Land Registrar will prejudice the defence case.

For now the defendants have not argued their case. Clearly it was too presumptuous for the plaintiffs to imagine that the defence would call the same witnesses they were anticipating. This is the plaintiffs case and they ought to have exhibited their evidence.

The documents in my view which were marked would help this court arrive at a fair conclusion of this matter. I do not think that the defendants would suffer any prejudice or at all. They shall be at liberty to cross examine the Land Registrar. The application in my view has been made expeditiously and without any undue delay. I agree however that this matter has taken a long time the both parties have in one way or the other contributed to the delay.

The provisions of Article 159 of the Constitution I believe applies herein. There ought to be a just conclusion of the case and speedily.

The court is mandated to look substantive justice. The issues herein revolve around land and the Land Registrar being custodian of the records ought to shed more light.

In allowing the application the case shall only be re-opened for the Land Registrar to produce the only marked documents and nothing else. The defence counsels shall have the liberty and opportunity to cross-examine the said witness.

The respondent shall have the costs of this application.

**Delivered on this 9<sup>th</sup> day of March 2017.**

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**H.K. CHEMITEI**

**JUDGE**

**In the presence of:**

**Wanyama holding brief for D.B. Onyango for 6<sup>th</sup> defendant**

**S.M. Onyango for 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> defendants**

**Oluoch for plaintiff**

**Kirong -Court Assistant**