



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC CASE NO. 34 OF 1998**

**EUNICE MUGURE MUCHORI.....1<sup>ST</sup> PLAINTIFF**

**IBRAHIM BAIYA MUCHORI.....2<sup>ND</sup> PLAINTIFF**

**JIM B. MUCHORI.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PETER MACHARIA.....DEFENDANT**

**RULING**

1. The plaintiffs' counsel has sought an order that the documents filed by the defendant after the hearing date was fixed to be expunged; and that the defendant's second witness, one **Joseph Wainaina Ndung'u** be disqualified.
2. The grounds are that Mr. Okoth, Counsel for the defendant is not new to the matter and that during his period of service to the defendant he failed to file the documents now impugned until **27/7/2020** after which he served them upon the plaintiffs' counsel on **28/7/2020**. Further Mr. Kiarie objects to the documents as no leave of court was ought to file them.
3. Mr. Okoth in reply stated that he had always thought that the defendant's erstwhile advocate before him had filed the necessary documents and so he did not file any till **27/7/2020**. He also asserted that the documents filed on **27/7/2020** are all not new save one, the list of members. He stated they had been attached to affidavits at the interlocutory application in the suit before hearing commenced.
4. Mr. Kiarie in response to that averment states that the inclusion of those documents among the annexures to affidavits at the interlocutory stage does not qualify them to have them admitted at the trial and that compliance with **Order 11** was a necessity if any such documents were intended to be relied on.
5. Mr. Okoth is of the view that the admission of the said documents in the record would not prejudice the plaintiffs and that the court, having allowed the defendant to present his case should hear him fully.
6. The wheels of justice grind slowly, so said Shakespeare and this appears to be too true in this case. However the effluxion of time due to the need to observe statutory timeframes for the taking of action e.g. **15 days** to file appearance, a specified number of days to file defence and so on, as well as the need for parties to await their turn while the court schedule regarding the hearing of other matters is being expended should be distinguished from a party's wilful or even negligent delay to take action in a matter.
7. This court has granted the defendant an opportunity to be heard by setting aside directions made on **26<sup>th</sup> November, 2019** denying him a chance to do so notwithstanding that those directions were procedurally made. The Ruling delivered on **30/6/2020** gave him a second chance. The Ruling also ordered that for effective case management and to stamp out any delaying tactics by the defendant no interlocutory application could be filed in the matter without leave of court. The court ordered that the hearing do proceed on the basis of the documents on the record. No leave to file an application was sought. The orders made on **30/6/2020** are still in force. **30 days** after the orders were made the defendant is still in default, for this court, owing to those orders, cannot see or purport to see or take cognisance of documents filed without leave against the letter of spirit of those orders.
8. For those reasons, I agree with Mr. Kiarie's application and I order that all the documents filed on **27/7/2020** by the defendant be expunged from the record and the defendant's second witness, one Joseph Wainaina Ndung'u be disqualified.
9. The hearing shall proceed on the basis of any documents the defendant had filed in compliance with **Order 11** of the **Civil Procedure Rules** before the Ruling made on **30/6/2020** was issued.

It is so ordered.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of July, 2020.**

**MWANGI NJOROGI**

**JUDGE, ELC, KITALE.**

**30/7/2020**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Collins

Mr. Kiarie for the plaintiffs

Mr. Okoth of the defendant

**COURT**

Ruling read in open court in the presence of both parties' counsel.

**MWANGI NJOROGI**

**JUDGE, ELC, KITALE**