

Defendant witness is due to be further cross-examined. The Plaintiffs have come across crucial documents relating to the suit property which documents were not available at the time the bundle of documents were filed and by the time the Plaintiff's witness testified. The documents have been availed by the Ministry of Lands and are crucial in determination of the case. These documents related to the ownership of the suit premises as at 19.6.2014. It is absolutely necessary that these documents are placed before the court for a fair and just determination of the issues before the court. The Plaintiff's case is that the Defendants will not be prejudiced by the grant of the prayers sought as they will be interested in the contents of the documents, and will have a corresponding opportunity to file their documents in response.

4. The application is opposed by the 1st Defendant who filed grounds of opposition on 19th March 2015, stating that the documents to be introduced are inadmissible on account of irrelevance, that the application is affected by laches, that the orders sought will prejudice the Defendant, and that the application is misconceived.
5. I have considered the application and the oral submission made by counsel. The only issue I raise is whether this court can exercise its discretion to allow the application.
6. To address the issue, it is now clear that under the law all the parties will be afforded a fair opportunity to access the seat of justice. A party who has failed to file important documents in support of his case will be allowed to do that upon application if good reasons are provided. It is the Applicant's case that the documents they seek to produce relate to the ownership of the suit premises as late as at the 19th June 2014.
7. By that time the Plaintiff had already closed its case. The Plaintiff now alleges that the said documents, which are attached to his application, are so crucial to its case that it would be severely prejudiced if the application were not allowed.
8. The main opposition to the application is that the said documents to be admitted are irrelevant to the Plaintiff's case and shall misled the court, and prejudice the Defendants. It is not stated how the Defendants would be prejudiced, but the Applicant has stated that the Defendant will be given a chance to respond to the same. In this regard, i do not foresee, any prejudice to be suffered by the Defendant which cannot be remedied by costs.
9. The other ground, is that the documents are irrelevant to the Plaintiff's case and will mislead the court. In my view, if the said document are actually irrelevant to the Plaintiff's case that will be the Plaintiffs problem.
10. In any event, the relevance of these documents will be an issue to be determined by the court. I also do not believe that the court will be misled by the production of those documents.
11. Arising from the foregoing the Plaintiff's application under consideration is allowed as prayed with costs to the 1st Defendant.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 10TH DAY OF NOVEMBER 2015.

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for the Plaintiff

Thangei holding brief for Nthige for the Defendant

Teresia – Court Clerk