



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL CASE NO. 50 OF 2007**

ERASTUS ITIJE M'MUTIRITHIA.....PLAINTIFF

VERSUS

M'MBUI M'ELONG'I.....DEFENDANT

**RULING**

On 21.8.2013, Mr. C. Otieno, advocate for the defendant made an oral application requesting the Court to allow him to call an extra witness who was not in his list of witnesses.

This oral application was vehemently opposed by Mr. V.P. Gituma, the advocate for the plaintiff who said that this application amounted to an ambush and would be prejudicial to his client's case.

Mr. Otieno said that Land was an emotive issue and the evidence to be given would be beneficial to both the plaintiff and the defendant. That knowledge is only within his confines at this moment. The intended witness is the Land Adjudication Officer, Athanwa Adjudication Section.

I have considered this matter. This is an unprecedented move. The plaintiff has already closed his case. Order 11 rule 8 stipulates that Memorandum and Order as stipulated should bind the parties unless the Court otherwise orders.

Parties should not be allowed to go on a fishing expedition with regard to evidence. I will, however, reluctantly allow the defendant to call his one witness with the proviso that the plaintiff will be allowed sufficient time to study the new evidence and to address the Court appropriately. I direct as follows:

1. **The defendant may call the District Land Adjudication Officer, Athanwa Adjudication Section provided that the witness statement with regard to this witness will be filed and served upon the defendant within 21 days from today failing which the new evidence will not be entertained by the Court.**
2. **The plaintiff will be allowed sufficient time to study the new evidence.**
3. **Directions on 5.12.2013.**

Delivered in Open court at Meru this 9th day of October, 2013 in the presence of:

Cc. Mwonjaru/Daniel

Otieno for Defendant – Absent

V. P. Gituma for Plaintiff – Absent

**P. M. NJORGE**

**JUDGE**