

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT BUSIA

CASE NO.99 OF 2017

BARASA OBANGO OKWAKO.....PLAINTIFF/APPLICANT

= VERSUS =

ALEX WANDERA MAKOKHA.....DEFENDANT/RESPONDENT

R U L I N G

1. For determination is the application dated 30th April 2020 filed under article 159(2) (c) and (d) sections 1A, 1B and 3A of the Civil Procedure Act, Orders 50 Rule 5 and Order 51 rule 1 of the Civil Procedure Rules. The applicants seek to be granted orders:

i. That the Court be pleased to extend time within which to file a further list of documents and witnesses.

ii. That the already filed list of witnesses and documents be deemed duly filed.

iii. Costs of the application be provided for.

2. The application is supported by the affidavit sworn by Barasa Obango Okwaro on 30th April 2020. He pleads that he was granted 14 days' leave by the Court to file a further list of documents and witnesses on 14th October 2019 but he only secured a crucial document being a letter from the Land Registrar on 11th March 2020; way after the lapse of the leave period. The applicant attributed the delay in filing the said document to the Office of the Registrar of Land, Busia County, the Covid-19 pandemic and closure of his Advocates' offices. He prayed that he be granted the orders sought in the interests of justice.

3. The application is opposed vide the Defendant's replying affidavit deposited on 3rd July 2020. He stated that the applicant was indeed granted 14 days to file his documents but failed to do so. That this suit was filed way back on 11th May 2017 and no proper explanation has been offered. The Defendant averred that the Applicant commenced the hearing on 20th May 2019 without giving notice to the Court that there were other documents he intended to rely on.

4. The respondent deposes that the application was calculated to delay disposal of the case contending that the Land Registrar does not sit at the Land Control Board and is therefore not fit to write about the proceedings at the board. That it was questionable that the applicant's letter of 14th October 2019 could only elicit a response from the Land Registrar on 11th March 2020.

5. Parties elected to canvass the application by way of written submissions. However, the only submissions on record are the plaintiff/applicant's filed on 18th August 2020. I have considered the application, submissions and the applicable law. The record of proceedings on 14th October 2019 shows that indeed the Court granted the Plaintiff 14 days leave to file additional documents which order was not complied to within the set timelines. The documents have now been filed and the court is called to extend time so that they are deemed as duly filed.

6. The defendant shall have a chance to challenge the said documents at the defence hearing. I therefore find no prejudice the defendant will suffer if the application is allowed. The applicant has also invoked the provisions of article 159(2) of the Constitution and Order 50 rule 6 of the Civil Procedure Rules that requires the Court to be guided to administer substantive justice. Further, the Court takes judicial notice of the effects of the Covid-19 pandemic that indeed disrupted court processes and other public activities during that period.

7. In light of the foregoing I exercise my discretion to allow the application dated 30th April 2020. The costs of the application awarded to the defendant in any event.

Dated and signed at BUSIA this 8th day of October, 2020.

A. OMOLLO

JUDGE