



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 241 OF 2017**

**PAULINE RIGIRI MUTHIORA**

**(Suing as the legal representative**

**and Administratrix of the estate of**

**GENARO MUTHIORA M'MBIRITHI (DECEASED).....PLAINTIFF**

**VERSUS**

**ZACHARY MURIKI JOSEPH**

**(Sued as the legal Representative**

**and Administrator of the Estate of**

**JOSEPH M'IKUNYUA M'IRINGO (DECEASED).....DEFENDANT**

**RULING**

1. Plaintiff's case was closed on 6.11.2018. Thereafter, counsel for defence prayed to be allowed to file a further statement to call one Mary Kaisangi as a witness. This application was objected to on the basis that this was not in the spirit of order II of the Civil Procedure Rules. Plaintiff's Counsel wondered why this evidence had been concealed.

2. In the case of **Interactive Gaming and lotteries limited vs Flint East Africa Ltd and two others, civil case no.115 of 2011 Nairobi**, the court had observed as follows; **"it is true that the plaintiff has closed his case. The current procedural legal regime especially order 11 of the Civil Procedure Rules is meant to ensure that the parties to a suit disclose their evidence upfront in order to avoid trial by ambush"**.

3. It is not lost to this court that defence counsel was absent on 13.12.2017, which date had been given by the court to ascertain compliance. This is perhaps a wakeup call for advocates to take pre-trial processes very seriously.

4. The court has inherent jurisdiction to make such orders as may be necessary to meet the ends of justice. But such jurisdiction must be anchored on reasonable grounds. The defence has not laid a basis as to why they intend to introduce witnesses who were hitherto unknown when plaintiff's case was progressing.

5. I find that the application is unmerited and the same is dismissed

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 13<sup>TH</sup> FEBRUARY, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Kiogora for plaintiff

Thangicia for defendant

Plaintiff

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**