



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 30 OF 2014**

**ISAAC NGEYWO.....PLAINTIFF**

**VERSUS**

**JAMES TUKER SIMATWA.....DEFENDANT**

**RULING**

1. This is a ruling on the application dated **19/9/2018** and filed in court by the defendant on **21/9/2018** seeking that leave be granted to the defendant to file and serve his list of witnesses, list of documents, statements and copies of his documents out of time and that in the alternative his list of witnesses, list of documents, statements and copies of his documents filed in court on **9/7/2018** and served on **10/7/2018** be deemed as properly filed and served. The application is supported by sworn affidavit of the applicant dated **18/9/2018** in which states that his advocate on record have informed him that they advertently failed to file and serve those documents within the stipulated time and that the same have nevertheless filed and served on the plaintiff's advocate and that he prays that the record be validated by the grant of the leave sought.

2. The replying affidavit of the plaintiff was filed on **22/10/2018** in opposition to the motion. It terms it as devoid of merit, fatally defective, bad in law and an attempt to delay the finalization of the suit. It is said to be brought under the wrong provisions of the law and too late in the day. Further it is stated that there is no good reason why the documents were not filed yet they were signed four and half years ago and that the court made an order locking out the documents which orders stands to date. Only the defendant filed the submissions on **6/2/2019**. He cites **Republic -vs- Public Procurement Administrative Review Board and 2 Others Ex-parte Syner'Chemie Limited HCJR No. 371 and 371 of 2015 Nairobi [UR]**.

3. While not condoning the defendant's delay in any manner I must state that while opposing the instant application, the plaintiff's self-righteous projection of a cherubic countenance fades through the prism of prior *suo motu* court orders borne of his delay in prosecuting this suit which summoned him to this court on **6/2/18** to show cause under order **17 Rule 2(1)** of the **Civil Procedure Rules**.

4. It suffices to note with relief that no evidence has been taken down from the plaintiff who should savour his good fortune arising from the court's turning down, on the basis of the defendant's noncompliance, of a dismissal application made by Ms. Sitati for the defence on **6/2/2018**.

5. Besides the plaintiff's counsel no doubt at his behest on the **9<sup>th</sup> July 2018** intimated a possible settlement hence occasioning an adjournment of that day's hearing. After that, on **10/7/2018** when the matter was set down for hearing the same could not proceed for Mr. Ngeywa for the defendant had a sick child.

6. A court does not decide a matter just for the sake of it. Real justice is dispensed on the basis of evidence. Unless that evidence can not be availed, or is presented long after the opposing side has presented its case a there is need to encourage its provision.

7. A court of law must endeavor where possible to hear and determine a matter on its merits and where a party has at least awoken to the need to have his record regularized and in the eyes of the court that regularization would aid the dispensation of substantive justice between parties the court may at its discretion indulge such a party and allow the taking of the action for which leave is sought, such as the filing and service of documents herein.

8. With that ample demonstration that both parties are equally blameworthy in occasioning the delay in the hearing of this matter, I believe that there is merit in the application dated **19/9/2018** and I hereby allow it with costs to the plaintiff.

**Dated, signed and delivered at Kitale on this 12<sup>th</sup> day of February, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**12/02/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Chebii for the plaintiff

N/A for the defendant

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**12/02/2019**