



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. 358 OF 2010

LUCY WANGARI NJOGU.....PLAINTIFF/APPLICANT

=VERSUS=

PETER LEONARD MWANGI.....1ST DEFENDANT/RESPONDENT

CONSOLIDATED BANK OF KENYA LTD....2ND DEFENDANT/RESPONDENT

CYRUS CITARI KATHURI.....3RD DEFENDANT/RESPONDENT

EQUITY BANK LIMITED.....4TH DEFENDANT/RESPONDENT

DIRECTIONS AND/OR RULING

1. Mr. P. J. Machira for the plaintiff objects to the evidence by the 1st defendant on the ground that he has gone out of his witness statement and will cause a lot of his witness statement and will cause a lot of prejudice to the plaintiff. Mr. Waweru for the 1st defendant maintains that the 1st defendant has not gone out of his witness statement.

2. I have considered the rival submissions. I have gone through the court record. The plaintiff’s witness statement dated 17th January 2012 and filed in court on 18th January 2012 is about 3 ½ pages long yet she gave her evidence in chief for a total of four days before she was cross examined. I have compared the witness statement and her evidence in chief and I find that she went out of her witness statement. The 1st defendant’s witness statement dated 14th May 2013 and filed in court on 15th May 2013 is about two pages.

3. In my view, the purpose of recording a witness statement is to give a brief outline of the evidence to be presented in evidence in chief.

4. The rules allowing the filing of witness statement were meant to expedite the hearing of suit. I am guided by Article 159 (2) (d) of the constitution in finding that this court ought not to dwell on technicalities but to administer justice.

5. No prejudice will be occasioned to the plaintiff as counsel has an opportunity to cross examine the 1st defendant extensively on the witness statement. I find this objection to be unmerited and the same is dismissed.

Dated, signed and delivered in Nairobi on this 12TH day of FEBRUARY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Ndungu for Machira for the plaintiff

Mr. Waweru advocate for the 1st defendant

Ms Machira for Maina for the 3rd defendant

