



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 346 OF 2011**

**DAMARIS WANJIRU MUNGAI.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**LUKA MUGUMA KIBUTHA.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**=VERSUS=**

**MACUA IGOGO.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**HINGA IGOGO.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**MWAURA IGOGO.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**NGUGI IGOGO.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**DIRECTIONS AND/OR RULING**

1. I have gone through the court record. This matter was commenced by way of originating summons. There is a replying affidavit sworn by the 1<sup>st</sup> defendant in which he annexed three documents. On the 27<sup>th</sup> July 2012 directions were taken that the originating summons be heard by way of viva voce evidence. In essence, this meant the originating summons was to be treated as a plaint and the replying affidavit a defence.
2. No further directions were taken as to the filing of a separate list of documents. The plaintiff in her evidence in Chief produced documents which were annexed to the originating summons as exhibits.
3. In her ruling, Hon. Lady Justice Gitumbi only stated that the defendants counsel could not cross examine on the documents at that stage as they had not been produced. In fact the reason given was that the defendants had not yet presented their case.
4. The defendants are now on the process of presenting their case, what better opportunity than now to produce these documents. It is in the interest of justice that the defendants be allowed to produce the said documents.
5. No prejudice will be occasioned to the plaintiff as the 1<sup>st</sup> defendant will be cross examined on the said documents. I find that the objection herein is found to be unmerited and the same is dismissed.

**Dated, signed and delivered in Nairobi on this 11<sup>TH</sup> day of FEBRUARY 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Chege advocate for the plaintiff

Ms Mukeri holding brief for Gachomo advocate for the defendant

Court Assistant - Kajuku