



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT EMBU

E.L.C. CASE NO. 40 OF 2014

ESTON NJERU MUNYI.....PLAINTIFF

VERSUS

JOSEPH GACHOKI KARANI & 14 OTHERS.....DEFENDANTS

RULING

1. By a notice of motion dated 27th February 2018 brought pursuant to the provisions of **sections 1A, 1B and 3A of the Civil Procedure Act (Cap 21) and Order 18 Rule 9 of the Civil Procedure Rules** the Plaintiff sought the following orders;

a. That this application be certified as extremely urgent.

b. That this honourable court do allow the evidence of all the Plaintiff's witnesses viz. Mwathi Mucembi, Nehemiah Machaki, Ngunguru Cue and Jacob Ngari Nyaga to be taken De Bene Esse.

c. That this honourable court do make any further orders in the interest of justice.

d. That the costs of this application be provided for.

2. The said application was based upon the grounds set out on the face of the notice of motion and supported by the Plaintiff's supporting affidavit sworn on 27th February 2018. It was contended that four (4) of the Plaintiff's witnesses were of advanced age and their evidence may be lost unless they were examined *de bene esse*. It was the Plaintiff's case that since the suit was filed in 2014, it is unlikely to be heard in the future because the court is currently dealing with older suits only.

3. When the said application was listed for hearing on 14th November 2018, the Plaintiff sought and obtained leave to file a further affidavit to tender medical evidence in support of the said application. The record shows that the Plaintiff filed a further affidavit sworn on 14th November 2018 which exhibited letters from Embu Level 5 Hospital indicating the respective ages of two of the witnesses.

4. The court has noted that the Defendants did not file any response to the Plaintiff's said application.

5. The court has considered the Plaintiff's said application, the further affidavit in support thereof and the material on record. It would appear that the Plaintiff's witnesses are persons of advanced age and some have failing health. The court is satisfied that it would be just to have them examined immediately so that their evidence is not lost in the event of their demise before the suit is set down for hearing.

6. The court is aware that there is significant backlog at the Environment and Land Court at Embu and that currently the court is dealing with suits which are much older than the Plaintiff's suit. In those circumstances, it is unlikely that the Plaintiff's suit will be reached in the ordinary course of business in the near future.

7. For the foregoing reasons, the court finds merit in the Plaintiff's said application. Accordingly, the Plaintiff's notice of motion dated 27th February 2018 is hereby allowed in terms of prayer No. 2 thereof. The court shall fix a date for the examination of the concerned witnesses upon delivery of the ruling.

8. It is so decided.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 28TH day of MARCH, 2019

In the absence of the parties.

Court clerk Muinde.

Y.M. ANGIMA

JUDGE

28.03.19