



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 153A OF 2012

MOHAMMED JAMA ABDI.....PLAINTIFF

VERSUS

JIMMY NYAGAKA.....1ST DEFENDANT

RHODA ONYANCHA.....2ND DEFENDANT

JAMES GACHOKI.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

RULING

Mr. Otieno for the plaintiff applies that the plaintiff's case be re-opened to enable him call witnesses from the Ministry of Lands; that is, the Director of Survey and the County Land Registrar Uasin Gishu.

The application is opposed by Mr. Mukhabane learned counsel for the 1st 2nd and 3rd defendant on the grounds that the plaintiff's case was closed on 17.9.2018. The defence case was closed on 17.9.2018. The 4th defendant's case was closed on 20.9.2018. All documents intended to be produced are dated 2016 onwards. The case was filed in 2004. There is no ground review for re-opening the plaintiff's case. He argues that the court should not aid the plaintiff and that the 4th defendant should not aid the plaintiff.

Mr. Odongo, State Counsel argues that the witnesses to be called are not in the list of witnesses. The court should not be seen to be aiding the parties by re-opening the case. The defendants will be prejudiced.

To begin with, on 21.9.2018, this court made an order:

1. That the County Lands Registrar and Director of Survey to attend court and give evidence.
2. That the County Lands Registrar to produce the parcel file of Eldoret Municipality/Block 7/258.
3. The Director of Survey to produce:
 - (i) Certified map of Eldoret Block 7 FR. 238/98; 232/35; 278/124; 230/174; 28/81; 198/150; 318/170.
 - (ii) A complete file No. CT/74/71/231 of 07/06/1995; CT/74/71/230 of 07/06/1995.
4. That the matter to be heard on 22.02.2019.
5. That documents to be filed within the next 30 days.

This order has not been set aside. There is no application for stay of proceedings pending appeal though a notice of appeal has been filed. It is only prudent that the order of the court be complied with unless there is an order staying proceedings pending appeal or unless the order is set aside.

The party who is desirous to call the Director of Survey and the County Land Registrar is the plaintiff. The defendants are not supporting the order that the two witnesses be called. It is only fair that the plaintiff's case be re-opened only for purposes of calling the Director of Survey and the County Land Registrar. The plaintiff is hereby allowed to re-open his case and call the County Land Registrar and Director of Survey who are very crucial witnesses in this matter, to enable the court hear and determine all issues in controversy. Costs in the cause. Orders accordingly.

Dated and delivered at Eldoret this 9th day of April, 2019.

A. OMBWAYO

JUDGE