



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

ELC CASE NO. 816 OF 2012

(AS CONSOLIDATED WITH ELC CASE NO. 47 OF 2010)

RAJAB AHMED KARUME.....PLAINTIFF

VERSUS

THE CHIEF REGISTRAR.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

INSURANCE TRAINING AND EDUCATION TRUST.....3RD DEFENDANT

RULING

1. On 7th May, 2019 when this case came up for hearing, Mr. A.G.N. Kamau advocate for Plaintiffs in ELC 47 of 2010 presented his second witness. Immediately after the second witness testified, Mr. A.G.N. Kamau applied for leave to file witness statements in respect of Mr. George Gachihi, Hassan Lakicha Advocate and Mr. Joseph Ndungu Gathonu. Mr. A.G.N. Kamau stated that he could not file the statements in time because he had first to seek leave and that the witnesses were out of town and therefore it took a bit of time to have them sign their statements.

2. The application by Mr. A.G.N. Kamau was opposed by Mr. Muchoki counsel for Plaintiff in ELC 816 of 2012 who argued that Mr. A.G.N. Kamau had been given time to file witness statements but that he had failed to do so. Mr. Muchoki urged the Court to proceed with the evidence of the witnesses who had already recorded their statements.

3. Mr. Motari for the 1st and 2nd Defendants in ELC 816 of 2012 opposed Mr. A.G.N. Kamau's application on the grounds that leave was being sought too late; that no good reason had been shown why statements could not be filed in time and that he did not see the basis upon which Mr. Hassan Lakicha was being called as a witness.

4. On his part, Mr. Ochieng Oduol, Counsel for the third defendant in ELC 816 of 2012 opposed Mr. AGN Kamau's application on the grounds that Mr. AGN Kamau was seeking to build up his case as hearing went on; that some statements of witnesses in ELC 47 of 2010 were filed seven years after the filing of the suit and that all witness in ELC 816 of 2012 had testified.

5. In answer to the opposition to his application, Mr. AGN Kamau argued that the witnesses whose statements he was seeking to file were mentioned in the statements of other witnesses and that one of the witnesses, Mr. Joseph Ndungu Gathonu was initially one of the Plaintiffs in ELC 47 of 2010 and that he came in to substitute one of the Plaintiffs who had died in order to take care of the interests of the estate of the deceased Thumbi Kariuki.

6. I have considered the application by Mr. AGN Kamau as well as the opposition to the same by Mr. Muchoki, Mr. Motari and Mr. Ochieng Oduol. The only issue for determination is whether Mr. AGN Kamau should be allowed to file the witness statements of the witnesses. I have perused the statements recorded by the witnesses for Plaintiffs in ELC 47 of 2010. There is a statement by one Mahat Adan Abdirahman filed on 6th June, 2017. This witness has mentioned Hassan Lakicha Advocate who is said to have prepared a sale agreement between him and Thumbi Kariuki (now deceased).

7. The other witness whose statement is to be filed is Joseph Ndungu Gathonu. This is the witness who substituted the late Thumbi Kariuki. Thumbi Kariuki had started giving his evidence. He was stood down as he was unwell. He never came back to complete his evidence as he

died on 10th October, 2017. The deceased was substituted by Joseph Ndungu Gathondu on 17th May, 2018. George Gachihi is a State Counsel. On 24th May, 2017 Mr. AGN Kamau applied for witness summons for Hassan Lakicha and George Gachihi. It is therefore clear that Mr. AGN Kamau has all along had intention of calling the witnesses whose statements he seeks to file.

8. The right to hearing is a fundamental right which should only be denied in exceptional cases. The circumstances under which Mr. Joseph Ndungu Gathondu is being called are clear. He would not have been called as witness were it not for the death of Thumbi Kariuki. Mr. Hassan Lakicha has been mentioned in a statement recorded by one of the witnesses. Mr. Hassan Lakicha's role is evident from the statement of Mahat. It will therefore not be a case of being ambushed if his statement were to be allowed. I therefore find that it will not be prejudicial to the other parties in this case if the witness statements are allowed. I therefore grant leave to Mr. AGN Kamau to file witness statements of Hassan Lakicha, Advocate, Mr. George Gachihi and Mr. Joseph Ndungu Gathondu.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 8th day of May, 2019.

E.O.OBAGA

JUDGE

In the presence of

Mr. Muchoki for Plaintiff in ELC 816/2012.

Mr. A.G.N Kamau for Plaintiff in ELC 47/2010

Mr. Ouma for Mr. Ochieng Oduol for 1st Defendant in ELC 47/2010.

Court Assistant Hilda