



REPUBLIC OF KENYA



**Tumpes v Kenya Commercial Bank Limited & another; Mwangi & 11 others (Interested Parties)
(Environment and Land Case 43 of 2017) [2025] KEELC 5738 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5738 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 43 OF 2017**

MD MWANGI, J

JULY 30, 2025

BETWEEN

BENJAMIN LEMASEI TUMPES PLAINTIFF

AND

KENYA COMMERCIAL BANK LIMITED 1ST DEFENDANT

JANE NYAMBURA MWANGI 2ND DEFENDANT

AND

ZIPPORAH GATHONI MWANGI & 11 OTHERS INTERESTED PARTY

RULING

(On the application by the Plaintiff to file further witness statements and supplementary list of documents)

1. On 10th June 2025, when this matter was scheduled for pre-trial conference, the Plaintiff's advocate sought leave to file further witness statements. The Plaintiff had subsequent to the adjournment of the hearing of his case filed and served two additional witness statements and a supplementary list of documents.
2. The 2nd Defendant through her advocate, Mr. Gichuru, protested the move by the Plaintiff and vehemently opposed the application to file further witness statements and documents on the premises that a case management order had been issued way back in the year 2020. Two witnesses had already testified on behalf of the Plaintiff, according to the 2nd Defendant and the Plaintiff had indicated that he was remaining with only one more witness.
3. The 2nd Defendant pointed out that the Plaintiff's move to file further witness statements of witnesses who were not in his initial list of witnesses was an attempt to fill in evidential gaps brought out through cross-examination. He was taking advantage of the latter pre-trial conference to re-open his case.



4. The advocate for the Plaintiff, Mr. Ngethe in rejoinder informed the court that Justice Gicheru had granted the Interested Parties leave to file documents with corresponding leave to the Plaintiff to respond. The Interested parties had indeed served the Plaintiff with a bundle of documents. The Plaintiff was only exercising his right of response just like any other party in the suit.
5. The court undertook to give directions on the application by the Plaintiff in form of a ruling.

Issues for determination

6. Having considered the arguments by the Plaintiff and the 2nd Defendant, the issue for the court to determine is whether the Plaintiff is entitled to file further witness statements and supplementary documents.

Determination

7. From a perusal of the record, it is indeed true that two witnesses had already testified on behalf of the Plaintiff. On 5th March 2024 however, Gicheru J granted the Interested Parties leave to file and serve their pleadings by 30th April 2024. The Judge extended the time for the Interested Parties to file their pleadings by another 30 days. He further noted that the other parties were at liberty to respond to the new material. This necessarily included the Plaintiff.
8. The 2nd Defendant is right that pre-trial directions had been issued way back in 2020. However, the admission of the Interested Parties and the subsequent order by the court allowing them leave to file documents re-opened the pleadings. In fact, on 10th December 2024, the Judge recorded that pleadings were to remain open until 28th February 2025.
9. Having re-opened the pleadings, the court ostensibly went back on its pre-trial directions.
10. The Plaintiff like any other party in these proceedings is entitled to respond to the issues raised by the Interested Parties and counter the new documents placed on the record. This may actually necessitate the hearing of the case de novo.
11. I therefore find and hold that the Plaintiff and all the other parties in this matter are at liberty to file further witness statements and bundle of documents to counter the material presented by the Interested Parties.
12. The upshot is that this matter will have to go back to pre-trial directions for the purposes of re-issue of fresh directions on its hearing and disposal taking into account the presence of the 12th Interested Parties in the proceedings.
13. The rationale of case management or pre-trial directions under the provisions of Order 11 is to discourage trial by ambush and ensure that the provisions of Sections 1A and 1B of the [Civil Procedure Act](#) are meaningfully implemented to create a level playing field for all the parties before the Court by ensuring the principles of equality of arms is maintained and as far as practical to place the parties on equal footing.
14. The court will issue the timelines within which parties who wish to file any further documents and or witness statement(s) must do so before the next case management conference.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF JULY 2025.

M.D. MWANGI



JUDGE

In the virtual presence of:

Mr. Ngethe for the Plaintiff

Mr. Mwangi h/b for Mr. Gichuru for the 2nd Defendant

Mr. Kimani for the Interested Parties

N/A by the 1st Defendant

Court Assistant: Edwin

M.D. MWANGI

JUDGE

