



Warega & another (Suing as the legal administrator of the Estate of the Late Bethwel Opiyo Warega) v Ndicho & 2 others (Civil Suit 203 of 2021) [2026] KEMC 36 (KLR) (15 January 2026) (Ruling)

Neutral citation: [2026] KEMC 36 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT 203 OF 2021
PA NDEGE, SPM
JANUARY 15, 2026**

BETWEEN

PETER ODONGO WAREGA & BARBARA MWANZA ONDENYI (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE BETHWEL OPIYO WAREGA) PLAINTIFF

AND

**HANNAH WANGARI NDICHO 1ST DEFENDANT
SAMSON NJERU MWANJA 2ND DEFENDANT
WILSON KARIUKI 3RD DEFENDANT**

RULING

1. Before me is a Notice of Motion application dated 16/06/2025 brought pursuant to the provisions of Order 7, Rule 17(1) and (2) of the [Civil Procedure Rules](#), Article 159 (2) (d) and (e) of the [Constitution](#), Section 146 (4) of the [Evidence Act](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#), wherein the 2nd Defendant/ Applicant is seeking for the following substantive orders: -
 - a. That this honorable court be pleased to allow the 2nd Defendant/ Applicant's supplementary list of documents and witnesses dated 03/06/2025 be deemed as properly on record.
 - b. That this honorable court be pleased to allow the 2nd Defendant/ Applicant's driver and police officer adduce evidence which is crucial in aiding the court reach a justifiable determination.
 - c. That this honorable court be pleased to set the case for hearing on a priority basis.
 - d. That the costs of this application be in the cause.



2. The application is based on the 10 grounds on its face, and is supported by the affidavit of Carolyn Shavulimo sworn at Nairobi on 16/06/2025. It has been opposed by the Replying Affidavit of Sylvia A. Obura, learned counsel for the plaintiff, sworn at Nakuru on 05/12/2025.
3. I have gone through the written submissions filed by both parties to the application herein. The provision of Order 7, Rule 5, Order 3, Rule 2 and Order 11 of the Civil Procedure Rules require parties to file and exchange written statements and documents before the hearing begins. The Defendants participated in pre-trials several times and they did not raise any challenge, and never sought extension of time until after the plaintiff has testified. As correctly submitted by the learned counsel for the plaintiff/respondent, this conduct shows indolence and lack of diligence and the application herein is therefore an abuse of the court's process. The defendant's conduct shows a pattern of delay intended to derail the expeditious disposal of this matter. Such behaviour falls afoul of the overriding objective and amounts to an abuse of process.
4. The plaintiff has already testified and this matter is pending further hearing. The defendant cannot therefore be allowed to have the opportunity to tailor evidence to respond to facts revealed in the plaintiff's testimony. Parties are not allowed to litigate in ambush. Allowing the application shall be prejudicial to the plaintiff who has already commenced his case and for those reasons, I do hereby dismiss the application with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 15TH DAY OF JANUARY, 2026

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Atieno

2nd Defendant's Counsel: Nekesa

Plaintiff/ Respondent: n/a

1st Defendant/ Applicant: n/a

2nd Defendant/ Applicant: n/a

3rd Defendant/ Applicant: n/a

