



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC CASE NO. 824 OF 2015**

**(FORMERLY HCCC NO. 144 OF 2007)**

**SAMJAY VARMA & OTHERS.....PLAINTIFFS**

**VERSUS**

**JACKSON ESHIWANI LIKOYE & 7 OTHERS.....DEFENDANTS**

**RULING**

1. Mr. Amondi, advocate for the Plaintiffs sought to call PW3 and the last witness. Mr. Sam Onyango objected to the calling of the witness stating that the PW3 had not filed a statement and that the issue of calling PW3 was Res-judicata.
2. According to Mr. Onyango, calling PW3 would be offensive to **Article 50 of the Constitution of Kenya** and it is totally pre-judicial to the defendants.
3. Mr. Quiou advocate for the 9<sup>th</sup> defendant supported Mr. Onyango stating that the application should be rejected as the PW3 wants to respond to something that was said in court.
4. Mr. Amondi learned counsel for plaintiffs responds that the application is not for filing of witness statement but to allow the 3<sup>rd</sup> plaintiff to testify. The 3<sup>rd</sup> Plaintiff has always been available and was a party since 2007. The defendants will not be prejudiced and that the PW3 will not introduce any new document.
5. I have heard all counsel on record. I do find that the 3<sup>rd</sup> Plaintiff has failed to comply with cardinal provisions in the Civil Procedure Rules of disclosure to the other parties in litigation. It is important for a party to file a statement to enable the opponent to know what he intends to say in his testimony. It will be highly prejudicial to allow the 3<sup>rd</sup> Plaintiff to testify without a statement.
6. The 3<sup>rd</sup> Plaintiff's application to file statement has been dismissed, I do find no merit in the application to give the 3<sup>rd</sup> Plaintiff permission to testify without a statement. Giving such an order will amount to a review of the decision of the court made on 10/6/2019 rejecting the witness statements.
7. The application is dismissed with costs.

Orders accordingly.

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF OCTOBER, 2019.**

**In the presence of:**

Mr. Amondi for Plaintiffs

Mr. Onyango for 2<sup>nd</sup> – 8<sup>th</sup> Defendants

Mr. Quier for 9<sup>th</sup> Defendant.

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**