



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC NO. 46 OF 2010**

**ETHICS & ANTI CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**WILSON GACANJA.....1<sup>ST</sup> DEFENDANT**

**WILLIAM KIPSEREM BUSIENEL.....2<sup>ND</sup> DEFENDANT**

**INDUSTRIAL & COMMERCIAL DEVELOPMENT CORPORATION.....3<sup>RD</sup> DEFENDANT**

**DR. ARTHUR MBULIKA USAGI.....4<sup>TH</sup> DEFENDANT**

**ELIZABETH WANJIRU USAGI.....5<sup>TH</sup> DEFENDANT**

**JOYCE KANAGA ANDEMBE.....6<sup>TH</sup> DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> defendant prays for leave to file his documents in the matter. Ms. Mwemeke informs the court that she was appointed only 2 weeks ago and upon perusal she has found that the documents were not filed. On **29/1/2019**, this court granted the 2<sup>nd</sup> defendant leave to file a defence, after he applied formally to court, alleging non-service of the summons upon him as the basis for non-filing of the defence.

2. The unsavoury history of the 2<sup>nd</sup> defendant's dalliance with a number of law firms, purportedly appointed to represent him in the matter, some on the eve of the hearing of this matter, is outlined in paragraph 2 of that ruling. Now Ms. Mwemeke has joined the long and still growing list of those advocates and her recent appointment forms a seductive ground for the granting of leave to file fresh documents in this matter on behalf of the 2<sup>nd</sup> defendant, a feat which the 2<sup>nd</sup> defendant's erstwhile counsel failed to achieve during their brief stints.

3. This court has already pronounced the 2<sup>nd</sup> defendant's conduct in this suit to be improper during the earlier stages of this litigation and, worse still, it found that he had no valid ground for failure to file a defence. It also found the 2<sup>nd</sup> defendant to be less than candid in his allegation of non-service in the ruling dated **29/1/2019**.

4. Besides, all the above, in today's application quite valiantly put forward by Ms. Mwemeke, there is a dearth of evidence of existence of valid grounds as to why documents, which have not been expressed to be expert reports, were not filed together with the defence as required on **12/2/2019**.

5. Furthermore not only has the plaintiff closed his case but one of the defendants too. It can only be imagined with not so little trepidation the extent of retrogression the granting of Ms. Mwemeke's request would bring in this litigation. No person may predict with any measure of certainty which of the parties may be prejudiced by such an order sufficiently to galvanize them into applying for the reopening of their respective cases, and after that, how long it would take to conclude this old matter.

6. In this matter, all the parties can see the possible end of the process as at the present. It is not a proper thing for the 2<sup>nd</sup> defendant to fail to even allow the other parties to have sight of his secret weapons that may, if blindly allowed, wreak mass destruction on their cases. I must say that the greatest failure of the 2<sup>nd</sup> defendant is in failing to disclose what he wishes to produce as evidence in future in the matter, and the other parties, are held at ransom, unable to consent, waiting with bated breath for this court's decision.

7. I find this application to be quite another ruse from the 2<sup>nd</sup> defendant's repertoire calculated at halting the onward march of this litigation

to its denouement. The maxim interest *republicae ut sit litium finis* must find its rightful place of implementation in this litigation and that will be effected by a denial of Ms. Mwemeke's application.

8. I therefore deny the said application and I order the hearing to proceed without any further documents being filed by any party.

**Dated, signed and delivered at Kitale on this 25<sup>th</sup> day of November, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**25/11/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Mokuu for plaintiff

N/A for the 1<sup>st</sup> defendant

Ms. Mwemeke for 2<sup>nd</sup> defendant

Mr. Khakula for 3<sup>rd</sup> defendant

Mr. Bisonga for 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**25/11/2019**