



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 31 OF 21015

**ANASTACIA NTAKIRA (suing as legal representative
of the estate of KWIRIGA MWAMBA (DECEASED)).....PLAINTIFF**

VERSUS

CHRISTOPHER M'MWARI ANTHONY.....1ST DEFENDANT

FESTUS K. KATHENDU.....2ND DEFENDANT

DAVID GITUMA.....3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL...4TH DEFENDANT

RULING

1. This ruling is in respect of the application made by the Counsel for 5th Defendant in respect of the scene visit and in respect of production of two title deeds.
2. The scene visit has been agreed upon by all.
3. On the production of the original titles for the two parcels of land 1019 and 1020, Plaintiff's counsel has objected to the production of the same on the basis that the court should apply same standards to all parties.
4. However, the Court's concern is the concept of fairness as stated in article 50(1) of the Constitution. The proviso doesn't state that no documents can be produced during the trial.
5. On the issue of the two title deeds, I believe they are the ones referred to in the two green cards already produced by the 5th defendant. I note that 5th defendant was cross examined at length on the entries in the two green cards and at some point, he stated that he could not interpret the said documents. It follows that the titles referred to in the green cards would shed light on the matter. It cannot be said that Plaintiff stands to be prejudiced since it is Plaintiff's Counsel who not once or twice but on several occasions inquired as to when the titles were issued.
6. I therefore, find that on 5th Defendant has laid a basis on why they desire to produce the two titles at this stage. To this end, the Court makes reference to the case of **Johana Kipkemei Too v Hellen Tum ELC No. 975 of 2012 Nairobi** where **Munyao Judge** stated:-

“where additional evidence brought by a party would avail that party an opportunity to present his/her case in full without causing undue prejudice to other parties in the suit, a Court could accept such evidence....”

7. In the circumstances, I allow the application for 5th Defendant to be recalled and produce the two title deeds. The other parties will be given an opportunity to Cross examine the witnesses in respect of the said documents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17th JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet

Mutungu for Plaintiff present

Mungai for 1st & 3rd Defendant present

Riungu for 5th Defendant absent

Kiety for A.G (4th Defendant) absent

Plaintiff present

HON. L. N. MBUGUA

ELC JUDGE