

REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA.

ELC. CASE NO. 110 OF 2014.

JOSEPH TAABU DESILO.....PLAINTIFF

VERSUS.

PETER OKIRU OMELA.....DEFENDANT

RULING.

[1] When this case came up for further hearing on 12/10/2017 Counsel for the plaintiff Mr. Omundi Bw' Onchiri told the court that the plaintiffs case was closed on 7th July 2015.

That on 30/8/2017 the defendant filed 16 fresh documents without the leave of the court. He applied to have those documents expunged from the court record.

[2] Mr. Keter for the defendant said when the defendant was stood down on 11th April, 2017 he was to bring the documents he wished to rely on. So on 30/8/2017 they filed fresh documents and that a list of those documents was forwarded to the plaintiffs. He said that these documents are relevant to this case. He asked the Court to exercise its discretion under Sec. 1B of the Civil Procedure Act in favour of admitting these documents since they are relevant to the determination of the case.

[3] Order 3(2) of the Civil Procedure Rules obliges a plaintiff to file all necessary documents. Likewise order 7 rule 5 obliges any defendant to file with their defence, any documents and witness statements they wish to rely on. Order 11 of the Civil Procedure rules obliges the court with a view to furthering expeditious disposal of cases and case management to within 50 days after close of the pleadings convene a case conference in which it shall consider compliance with order 3 rule 2 and order 7 rule 5.

Under Order 11 rule 7 (3) any party or his advocate who willfully fails or omits to comply with the provisions of this order shall be deemed to have violated the overriding objective as stipulated in Sec. 1A and 1B of the Act and the court may order costs against the defaulting party.

[4] The defendant asks me to exercise my discretion under Sec 1B of the Civil Procedure rules. This is the same rule that he has violated. He cannot find relief in that order. He was obliged to file all his statements and witness statement on filing his defence as per order 7 rule 5. He did not do so. He was given many chances by this Court to do so. He eventually filed his documents without leave and when the plaintiff had closed his case.

Those documents are not properly filed. They shall be expunged from the record.

It is so ordered.

Ruling read in open Court.

Dated at Bungoma this 21st day of February, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistant

Amani for Bw' Onchiri for the Plaintiff

Firm Keter for the Defendant/Respondent