



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 338 OF 2014

PAUL NDIRANGU MBUGUA & 85 OTHERS.....PLAINTIFFS

VERSUS

THE MINISTRY OF LANDS & 59 OTHERS.....DEFENDANTS

RULING

1. This matter came up for hearing of the suit on 21st February 2018. Earlier in the day, when the court did a mini call over to confirm readiness to proceed, counsel for all parties, in particular counsel for the 1st to 3rd defendants, indicated readiness to proceed. Subsequently, after the court was done with the call over of the day, the hearing started at 11.05am. The plaintiffs' sole witness testified and was cross examined by counsels for all the defendants. The plaintiffs' case was then closed after re-examination.

2. As soon as the plaintiffs' case was closed, Mr. Weche, learned counsel instructed by the Attorney General for the 1st to 3rd defendants applied to be allowed to file witness statements limited to referring to documents that had been produced by the plaintiffs and also to those that had been referred to by the 4th to 60th defendants. He added that the witness statements would bring clarity to the issues before the court.

3. Though counsel for 4th to 60th defendants did not oppose the application, counsel for the plaintiffs strenuously opposed the application, reminding the court that Mr. Weche had earlier in the day confirmed readiness to proceed despite the fact that he had not filed any witness statements. He added that the matter had come up for pre-trial directions and the Attorney General was given time to comply with Order 11 of the Civil Procedure Rules. That the plaintiffs having closed their case, the 1st to 3rd defendants' aim is to bring a witness statement that responds to the plaintiffs' evidence. Concluding that the application was made in bad faith, he urged the court to dismiss it.

4. I have considered the application and the submissions. The record herein shows that the issue of the 1st to 3rd defendants' compliance with Order 11 has come up on a number of occasions. For example, on 11th March 2015, counsel for the 1st to 3rd defendants sought and was granted 30 days to file and serve defence and compliance documents. Subsequently on 14th November 2016 in the presence of counsel for the 1st to 3rd defendants, the court scheduled the main suit for hearing on 25th May 2017. It is thus abundantly clear that the 1st to 3rd defendants had been given ample opportunity to comply with Order 11 which includes filing of witness statements.

5. In **Nakuru Automobile House Ltd –vs- Lawrence Maina Mwangi & Another [2007] eKLR**, this court had occasion to address the issue of compliance with Order 11. The court stated at paragraph 7 of the said ruling as follows:

Additionally, Order 11 of the Civil Procedure Rules 2010 has elaborate provisions aimed at preparing suits for trial. The whole idea is that each party should approach litigation with full disclosure such that the opponent knows the exact case that they will meet. Our system of litigation no longer has room for the old practices where litigants would hold their cards close to their chests only to spring a last minute surprise on the opposite party. An application to re-open a case so as to adduce additional evidence must now be viewed against the new regime requiring full disclosure. The applicant herein has totally failed the disclosure test.

6. It is also important to note that under section 1A (3) of the Civil Procedure Act, parties have an obligation to assist the court to further the overriding objective of the Civil Procedure Act which is to facilitate the just, expeditious, proportionate and affordable resolution of disputes before the court. Parties also have a duty to comply with directions and orders of the court.

7. In view of the foregoing, is it just to allow the 1st to 3rd defendants' plea? I do not think so. The 1st to 3rd defendants have not filed any defence despite being afforded a chance to do so. In such circumstances, witness statements from the 1st to 3rd defendants would be superfluous. Further, it would be unjust to allow the 1st to 3rd defendants to introduce a whole new angle to the case after the plaintiffs' case has been heard and closed. The damage that such a development may occasion to the plaintiffs may not be remedied simply by allowing the plaintiffs to reopen their case.

8. In the circumstances, the 1st to 3rd defendants' application to be allowed to file witness statements at this stage is dismissed with costs to the plaintiffs.

Dated, signed and delivered in open court at Nakuru this 22nd day of May 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Cheruto holding brief for Mr. Karei for the plaintiffs/respondents.

Mr. Weche for 1st to 3rd defendants/applicants.

Mr. Opar for 4th to 60th defendants.

Court Assistants: Gichaba & Lotkomoi