



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 222 OF 2013**

**EMILY CHERONO KIOMBE..... PLAINTIFF**

**VERSUS**

**JACOB KAMONI KARI.....DEFENDANT**

**RULING**

The application before court is dated 23<sup>rd</sup> August, 2017. The plaintiff seeks to reopen his case claiming to have prematurely closed the same on 13.3.2017 and therefore seeks leave to tender more evidence.

The application is based on grounds that the plaintiff testified and prematurely closed her case on the 13<sup>th</sup> March, 2017. That re-opening of the plaintiff's case will assist the court in meeting its overriding objective as per section 1A of the Civil Procedure Act and that the counsel conducting the plaintiff case inadvertently closed the plaintiff's case before producing all the documents and some of the documents were not in possession of the plaintiff during the hearing. The defendant will not be prejudiced since the defendant has not testified and he will have an opportunity to cross examine on the document to be produced.

The application is supported by the affidavit of Emily Cheroni Kiombe who states that her advocate in conduct of the hearing closed her case prematurely without producing all the documents and that the reason was that all the time of the hearing, there were documents that were not in her possession but which are relevant to this case.

She prays that this Honourable court be pleased to re-open her case to produce the said documents. That she is being informed by her counsel whose information she believes to be true that the production of this document will assist this honourable court in achieving its overriding objective pursuant to section 1A of the Civil Procedure Act. That she is further being informed by her counsel whose advice she believes to be true that the respondent will not be prejudiced in any way since will have an opportunity to peruse the document and cross examine on the same.

She is also being informed that this current application is not an abuse of the court process since it will assist the court in making a just determination on this matter. That she makes this application with utmost good faith and without prejudice to the rights of the defendant to be heard.

The application is opposed by the defendant who states that the application has been made after inordinate delay. Moreover, that the application was dated 23.8.2017, filed on 2.11.2017 and fixed for hearing on 14.3.2018. The respondent states that the application is an affront to the principle of discovery and disclosure of documents. The suit was filed in the year 2009 and that the documents were all always in possession of the plaintiff.

I have considered the application and the replying affidavit and do find that there is inordinate delay in bringing this application to court. The plaintiff has already commenced testifying and therefore, any intent to file further lists of documents is made with inordinate delay. Moreover, the plaintiff is conducting her case rather casually as the application was filed without any urgency despite the fact that the matter was part-heard. The plaintiff appears to be intended to panel beat her case when the same is already proceeding and appears intent on delaying the expeditious proceedings in this matter.

It is trite law that **the court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion, the court should ensure that such re-opening does not embarrass or prejudice the opposite party. In that regard re-opening of a case should not be allowed where it is intended to fill gaps in evidence. Also, such prayer for re-opening of the case will be defeated by in ordinate and unexplained delay. In this case there is inordinate delay.** The application is not allowed and is dismissed with costs.

**Dated and delivered at Eldoret this 15th day of May, 2018.**

**A. OMBWAYO**

**JUDGE**