



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

CIVIL SUIT NO. 30 OF 2017

CHARLES KABURU.....PLAINTIFF

VERSUS

MUNYUA NDATHODEFENDANT

R U L I N G

This Ruling is in respect of the application made by Plaintiff's Counsel to recall. Plaintiff (PW1) to produce document, the judgment in Nkubu SPM'S Court Cr. Case. No. 957 of 04. The basis upon which the application is made is that:-

When the Court gave Pre trial directions on 02:02:17, Plaintiffs side had indicated that they will rely on their list dated 14:11:16.

Plaintiff's side now states:-

- i. That there was no objection to that list.
- ii. That the documents were filed pursuant to a Court order.
- iii. That Plaintiff can only respond to allegations made in defence statements by being put on the dock.
- iv. That when the Plaintiff testified, the Nkubu Case had not been finalized.

That defendant will not in anyway be prejudiced.

The application is opposed whereby defence Counsel states that:-

- (a) Plaintiff knew his case when the matter was fixed.
- (b) That Plaintiff and the Land Registrar have already testified.
- (c) That Plaintiff wants to cure defects that arose during the cross examination.
- (d) That in his statements he confirms he has already testified.

This Court being a Court of record as well as a Court of justice has to be guided by what is on Record and what is just and fair.

I find that this is a very old case, the same having been filed way back in 2002. Plaintiff gave his testimony as from 07:06:06 upto 08:03:11. It is more than 10 years now from the time Plaintiff commenced his testimony.

I also find that the case has been handled by several Judges. On 29:09:16 Judge Gikonyo gave directions as follows:-

- i. The parties shall be provided with copies of complete set of proceedings at a cost.
- ii. Second, Plaintiff shall file and serve witness statements for the remaining witnesses as well as documents.

It is clear from this order that for any documents and statements that were to be filed, it was in respect of the remaining witnesses, and not to recall the Plaintiff.

That notwithstanding, I find that the document which Plaintiff desires to produce is Judgment of Nkubu Court. Judicial Proceedings are matters where Judicial Notice of their existence can be presumed. That being the case, I do allow the recalling of the Plaintiff only for purposes of the production of the said document.

DELIVERED IN OPEN COURT AT MERU THIS 13TH MARCH, 2017 IN THE PRESENCE :-

CA: Janet

Mbaikiata h/b for Kiogora

Mugambi for Plaintiff

Plaintiff present

L.N. MBUGUA

JUDGE