

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 97 OF 2008

MARCELLUS LAZIMA CHEGGE..... PLAINTIFF

VERSUS

MARY MUTORO SIRENGO.....1ST DEFENDANT

JOEL JOB SIRENGO.....2ND DEFENDANT

PAUL ANDREW OKWARO.....INTERESTED PARTY

THE LAND REGISTRAR

TRANS-NZOIA/TURKANA

WEST POKOT.....PROPOSED RESPONDENT

RULING

1. This case has proceeded to hearing today. The plaintiff testified and closed his case. The 1st defendant testified in accordance with her desires. The parties referred to numerous documents which were admitted earlier. There is an admission by Mr. Arum for the defendant to the effect that the process of preparation of the suit for hearing had been completed earlier and the matter had been certified ready. It cannot be clearly understood from Mr. Arum's submissions upon his application for an adjournment and for admission of a statement to be made by the 2nd defendant, why that defendant never made any statement for filing in this suit in the first place while the 1st defendant was doing so. Yet they are both represented by the same firm of advocates.

2. This suit was originally filed in the year 2004 in the High Court. It is not lost upon this court that this morning Mr. Arum addressed me on an issue of jurisdiction which was discussed amongst the parties and resolved. If he had had his way, Mr. Arum would have had the matter dealt with by the subordinate court as this court, in his view lacked jurisdiction over such a matter as this. This would have entailed an adjournment and further delay as an application was made for the purpose of transfer.

3. Now an application for an adjournment of a suit is not one to be treated with lightness. It means that more days will be lost as the other party who does not agree to the adjournment is made to wait for the end of the case. And litigation, it must be emphasized, leads to a state of great anxiety among some, if not all the parties. Furthermore when extended over a long period, the process renders the final result meaningless to the parties at times. I find that in this particular case, I am not satisfied as to why the witness statement of someone who was made a party in the suit, was not filed as ordered by the court a long time ago. There is not even a draft shown to the other side for the purpose of placating their anxiety over what the witness will say.

4. To allow the 2nd defendant to file a statement at the moment is to open up this case to the possibility of a surprise being sprung upon the opposing party. The element of ambush and surprise is exactly what *Order 11 of the Civil Procedure Rules* meant to eliminate, besides bringing litigation to a speedy end. It would not be proper to go contrary to the spirit of the Rules in the Civil Procedure Rules in a case this old. The court has power to place any sanctions on a party who does not comply with its orders made pursuant to the Rules. In some cases the pleading may even be struck out. This has not occurred in the current case where the court has graciously allowed the defence case to proceed. The sanction that the court can allow to automatically place itself on the defendant's lap is the disallowance of the late filing of a statement.

5. I therefore disallow the application for adjournment and the application for a late filing of a statement. I also disallow the application or an oral testimony by the 2nd defendant as he has not filed any statement. The defendants are hereby ordered to proceed to the necessary conclusion of their case.

Dated, signed and delivered at Kitale on this 27th day of June, 2017.

MWANGI NJOROGE

JUDGE

27/6/2017