



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 202 OF 1995

NTARANGWI M'KIARA.....PLAINTIFF

VERSUS

JACKSON MUNYUA MUTUERA.....DEFENDANT

RULING

This ruling is in respect of the application made by plaintiff's counsel Mr. Kioga to produce a certain document in the course of testimony of PW'2s evidence. The court has been told that the court should know the truth by allowing the production of the proper minutes of the town planning are works committee dated 17/01/1978. The said document was not in the plaintiff's list of 6 documents.

The application was strangely opposed by defence counsel Mr. Kariuki M. who averred that the defence list of document was filed on 18/09/2015 while for plaintiff it was filed on 24/02/2016 and hence plaintiff had an opportunity to peruse defence documents and hence file all their necessary documents.

Although this is a an old matter bearing suit No. 202 of 1995, the parties appear to have agreed that they do comply with Order II.

Directions were given to that effect and served occasionally On 18/04/2012 the court was informed that parties had fully complied with Order II.

In practice, parties and their advocates dont really follow step by step of what is stipulated vide Order II. However what has gained notoriety and is considered as compliance is adherence to Order 3 rule 2 and Order 7 rule 5. It therefore follows that, when Mr. Muthaura holding brief for Mr. Kioga on 18/04/2016 informed the court that "Mr. Kioga has complied....."

It meant that plaintiff's documents to be relied on had duly been filed and that is why the court gave a go ahead for a hearing date to be taken.

All parties in a civil suit are called upon to comply with court's directions in accordance with section 1A and B of the Civil Procedure Rules. In particular, I make reference to Section 1A (j) of the Civil Procedure Act where it is stipulated that:-

"a party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the Act and to that effect to participate in the process of the court and to comply with the directions and orders of the court"

This provision does assist the court to carry out its mandate in line with the provisions of Article 159 2(b) of the Constitution to the effect that:-

“Justice shall not be delayed”

The purpose of compliance with Order II as well as Section 1A and B is to achieve overriding objective of the Act which is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Proper case management, is one of the ways of achieving the overriding objective as it preverly trial by....., see the case of:- **HUNKER TRADING CO. LTD VERSUS ELF OIL KENYA LTD Civil Application No. 69 of 2010 Nairobi** where the overriding objective was baptized as the O2 or Oxygen principle which is intended to “re-energize the process of the court's and to encourage good management of cases” In case of Interactive coming as **LOTTERIES LTD VERSUS FIRST EAST AFRICA, SAFARICOM LTD AND KENYA REVENUE AUTHORITY Civil Suit No. 115 of 2011 Nairobi** it was held that:-

“trial by ambush is no longer acceptable in civil litigation and any party who does so will be doing so at the risk of being locked out of relying on its documents”

I find that in the instant case, no plausible explanation has been advanced as to why the document that PW2 desires to produce was not filed with the plaintiff's list of 23/02/2016.

I therefore decline to allow the admission of aforementioned minutes at this stage.

DELIVERED IN OPEN COURT AT MERU THIS 12th DAY OF JULY, 2017 IN THE PRESENCE OF :-

C:A Janet

Wamache h/b for Kioga for Plaintiff present

M. Kariuki for Defendant

HON. L. N MBUGUA

ELC JUDGE