

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 98 OF 2016

ADRIANA KAUMI MWARABU.....1ST PLAINTIFF

MWARABU KIRIMI NICHOLAS.....2ND PLAINTIFF

VERSUS

PASTOR DENNIS MWENDA.....DEFENDANT

RULING

On 17.7.17, plaintiffs' case commenced and was closed. Defence case then commenced. Midstream defence desired to produce some photographs in support of defence case. These photos had not been availed to the opposing party and the Court before.

The counsel for plaintiffs raised Objection to the production of these documents and it was averred that such evidence ought to have been availed earlier.

I find that pre-trial directions were conducted by this Court on 5.4.17. The Court's directions regarding production of documents was that:-

“the Court will rely on documents on record only”.

I have not been persuaded as to why I should digress from this direction.

The production of documents hitherto unseen by the plaintiffs' side midstream of defence case amounts to ambush and this is against the provisions of Article 50 (1) of The Constitution on what amounts to a fair hearing.

As such, the objection is upheld. The photographs shall not be admitted as evidence for the defence.

DELIVERED, DATED AND SIGNED AT MERU THIS 15TH DAY OF NOVEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet/Haway

B.G Kariuki for Plaintiffs Present

Kithinji for Defendant Present

Hon. L.N. MBUGUA

ELC JUDGE