



**Kirui v Rono & 2 others (Environment & Land Case 18 of 2022)
[2024] KEELC 963 (KLR) (26 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 963 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 18 OF 2022
MN MWANYALE, J
FEBRUARY 26, 2024**

BETWEEN

OBADIAH KIPRUTO KIRUI PLAINTIFF

AND

JONATHAN KIPKEMBOI RONO 1ST DEFENDANT

REJOIN INVESTMENT LIMNTIED 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This ruling related to an oral objection raised today by Mr. Mwetich Learned Counsel for the Plaintiff on the introduction of Mr. Samwel Kipkoech Kogo as an additional witness in this matter through the list of witnesses dated 2nd December 2023, and the introduction of 3 new documents vide the supplementary list of documents of even date.
2. The nature of the objection as understood by the Court, is that the Plaintiff having testified and closed his case and subsequently passed on, would be prejudiced by the introduction of the witness and the documents. Since the documents and the witness were firstly filed without leave of the Court, and secondly, after close of the Plaintiff's case and are thus meant to be a trial by ambush contrary to Article 50 of the *Constitution*.
3. On his part Mr. Karanja Learned Counsel for the 1st and 2nd Defendants submits that the contents sought to be introduced by the 3 documents and the additional witnesses were already in the knowledge of the Plaintiff, having been captured in the initial witness statement by the 1st Defendant Mr. Jonathan Rono filed on 1st July 2013 and that the search and copy of title deed were public documents available at the Land Registry and were not new documents at all.



4. The apprehension on the part of the Plaintiff, is that the documents were filed without leave and they prejudice her case; while the Defendant submits that the same are not new documents.
5. The 3rd Defendant, represented by Ms. Odeyo Learned Senior State Counsel submits that the documents were already filed and there would be no prejudice if the new witness is allowed to testify.
6. I have looked the application and considered comparative law on the same and in the decision in the case of *Johana Kipkemboi Too v Hellen Tum*, where similar circumstances prevailed, an application for additional witnesses and documents was rejected, as the documents had been filed after the close of the Plaintiffs case and would have prejudiced the Plaintiff since the same greatly altered the Defendant's case, and were filed after the pre-trial.
7. In our present case, the documents herein have been in existence all through and ought to have been filed alongside the defence as provided for under order 7 (5) and before the commencement of the trial.
8. Additional documents can only be filed with leave be fore trial conference; under Order 11.
9. In this matter, trial conference was conducted and the Plaintiff had testified and would not get a chance to rebut the evidence.
10. Accordingly, and for the reasons advance, the Court finds the introduction of new witnesses' mid trial, is a trial by ambush and since the documents were filed without leave the same cannot be relied on.
11. The Court thus upholds the objection by the Plaintiff and the list of witnesses by Samuel Kipkoech Kogo dated 2/12/2023 and the supplementary list of documents by the Defendants dated on 2/12/2023 are hereby expunged.

RULING, DELIVERED AND DATED AT KAPSABET THIS 26TH DAY OF FEBRUARY, 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

1. Mr. Mwetich for the Plaintiff
2. Mr. Karanja for the 1st and 2nd Defendant
3. Ms. Odeyo for the 3rd Defendant

