



REPUBLIC OF KENYA



Odhiambo v Apoko also known as Ringtone (Environment & Land Case E135 of 2023) [2024] KEELC 1106 (KLR) (26 February 2024) (Ruling)

Neutral citation: [2024] KEELC 1106 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E135 OF 2023
EK WABWOTO, J
FEBRUARY 26, 2024**

BETWEEN

TERESIAH ADHIAMBO ODHIAMBO PLAINTIFF

AND

ALEX APOKO ALSO KNOWN AS RINGTONE DEFENDANT

RULING

1. On 30th January, 2024 when this suit had been scheduled to proceed for hearing, counsel for the Defendant Mr. Karanja made an oral objection seeking to have the replying affidavit sworn by CPL Joshua Oburu on 17th November, 2023 in ELC Civil Suit No. E012 of 2023 (OS) and which had been filed alongside the Plaintiff's further list and bundle of documents dated 6th of December, 2023 be struck out and expunged from the Court record.
2. Learned counsel Mr. Karanja argued that he was served with the said document on 11th December, 2023 and the same was received under protest. He also argued that the Defendant was not a party in ELC E012 of 2023 (O.S) in which the replying affidavit of CPL Joshua Oburu had been filed. It was also argued that the affidavit had been filed without leave of the Court and further that CPL Joshua Oburu had not been listed as a witness.
3. The objection was opposed by the Plaintiff. Learned counsel Mr. Mbaluto argued that the Court had granted the Plaintiff leave to produce certified copies of the occurrence book (OS). In compliance with the order the police officer who had investigated the matter had filed his affidavit in respect to the same. It was submitted that no prejudice would be suffered by the Defendant since the Defendant would be allowed to cross-examine the said office and hence therefore, the said affidavit should not be thrown out.



4. In a brief rejoinder, learned Counsel Mr. Karanja submitted that he has not had the opportunity to consult with his client in respect to the said affidavit and that if it were to be allowed, then he will need time to seek further instructions and file any further documents if necessary.
5. The court has considered the objection and has further perused the said Replying Affidavit sworn on 17th November, 2023 by CPL Joshua Oburu. The said Replying affidavit has several annexures totaling to over 500 pages. The suit has not been heard. the Replying Affidavit was filed and served on the Defendant in December, 2023 well before the date of the scheduled hearing. This is no law that bars a party from obtaining evidence even after a suit has been filed in court. This is because some evidence come to the attention or knowledge or possession of parties way after the matter had been filed.
6. The Plaintiff had been granted leave to file additional documents and in compliance to the said orders filed several documents included the affidavit of the Police Officer who investigated the matter. If there is any prejudice to be suffered by the Defendant, then the Court has power to grant leave to Defendants to file any additional documents in their possession to counter the affidavit filed. It is the duty of this Court to accord all parties an opportunity to be heard and ventilate their grievances and in this regard to file the documents they intend to rely on during trial if they have been granted leave to do so.
7. For the above reasons, I hereby exercise discretion and invoke the overriding objective of the Law in Civil Cases as stipulated in Sections 1A and 1B of the [Civil Procedure Act](#) and decline to struck out and or expunge the said Replying Affidavit.
8. Accordingly, the said Replying Affidavit sworn by CPL Joshua Oburu on 17th November 2023 is deemed as forming part of the Plaintiff's documents which shall be relied upon during the hearing of the suit. The Defendant too is granted leave to file any additional documents within the next 14 days from today.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2024.

E.K. WABWOTO

JUDGE

In the virtual presence of:

Mr. Mbaluto for the Plaintiff.

Mr. Karanja for the Defendant.

Court Assistant: Caroline Nafuna.

