



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**HCCC CASE No. 77 OF 2011**

**ROSEBELLA JERONO MUDAVADI & OTHERS.....PLAINTIFFS**

**VERSUS**

**DAVID KARIUKI WAIGANJO & OTHERS.....DEFENDANTS**

**RULING**

***(Application for adjournment; application made after counsel had earlier on in the day confirmed readiness to proceed; application dismissed)***

I have considered the submissions by all the counsels. When this matter was called out this morning, Mr. Simiyu learned counsel for the plaintiff indicated that he was ready to proceed with hearing of plaintiffs' case and that he had six witnesses. Upon the defendants objecting to "List of Further Documents" filed by the plaintiffs on 3<sup>rd</sup> October 2017, Mr. Simiyu stated that he would not rely on it. Consequently, the said "List of Further Documents" as well as the bundle of documents annexed to it were expunged from the record. The matter was then confirmed for hearing as the second hearing of the day.

The application for adjournment now made is a major departure from the position earlier taken by the plaintiffs. Having confirmed the matter for hearing, it is expected that a pretrial briefing had been done much earlier and that the plaintiffs and their counsel went through the pleadings and documents in the matter before confirming readiness for hearing. No adequate explanation has been offered as to how and why the sudden and monumental change of circumstances arose.

The reasons now advanced for adjournment are not minor ones. The plaintiffs say they want to further amend the plaint so as to change the description of some of the defendants and the capacities in which they are sued. The plaintiffs also wish to introduce further documents. These are major shifts in the plaintiffs' case and it is not easy to accept that the issues have cropped up suddenly. I do not accept that they have. It may very well be that it is a front for an adjournment. I appreciate the defendants' frustrations and difficulties in the circumstances. Trials should be orderly and predictable affairs.

If there was need to amend or introduce new documents, the plaintiffs' advocates should have communicated to the defendants' advocates well before today. As already noted, the plaintiffs' List of Further Documents was expunged earlier today. The plaintiffs cannot now go round that order by seeking to reintroduce those documents. Today's date was fixed by the plaintiffs' advocates who then served hearing notices on the other advocates.

For all these reasons, I see no merit in the application for adjournment. It is dismissed with costs to the defendants. Nevertheless, considering that it is now well after 3.15pm, the hearing cannot take off. The court has been pre-occupied for the better part of the day in another hearing. I will therefore give a new hearing date for the matter.

Hearing on 26<sup>th</sup> January 2018.

**Dated, signed and delivered in open court at Nakuru this 6<sup>th</sup> day of December 2017.**

**D. O. OHUNGO**

## **JUDGE**

In the presence of:

Mr. Simiyu holding brief for Mr. Ateya for the plaintiffs

Mr. Waiganjo for 1<sup>st</sup> defendant

Mr. Kahiga for 2<sup>nd</sup> defendant

No appearance for Attorney General for 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Court Assistant: Gichaba