



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**ELC CASE NO. 39 OF 2009**

**ROSE NYAMBURA THUMBI.....PLAINTIFF**

**Administratrix of Hezekiah Mathara Gathende (Deceased)**

**VERSUS**

**MARY WNAJIRU NJUGUNA.....DEFENDANT**

**RULING**

In this matter a notice to show cause why the suit should not be dismissed for want of prosecution in terms of Order 17 of the Civil Procedure Rules was issued on 7<sup>th</sup> May, 2015. The parties showed cause on 28/5/2015.

Mr. Kingara for the Defendant explained to the Court that HCCC No. 387 of 2010 (O.S) ELC had been consolidated with HCC. ELC No. 39 of 2009. He told the court that both parties were eager to be heard.

Mr. Asimuli, holding brief for Mr. Mwicigi Kinuthia for the Plaintiff was in agreement. It should be noted that because of the consolidation, Mr. Kingara who was the advocate for the Defendant on 28/5/2015 is now referred as the advocate for the Plaintiff. Mr. Kinuthia is now the advocate for the Defendant. Hearing was fixed for 21/1/2016, today.

Today, Mr. Kinuthia for the Plaintiff told the court that he wanted to file 3 new documents and some further witness statements. He also told the court that if he was allowed to file the apposite documents he would serve them upon the Defendant's advocate after which the hearing of the suit could proceed. Mr. Kingara for the Defendant objected. He said that he was ready to proceed with the hearing but without the documents Mr. Kinuthia intended to file. He told the court that he would need time to peruse any new documents and to seek appropriate instructions from his client.

I do note that the hearing date in this matter was fixed almost 8 months ago. I do not understand the rationale of the Plaintiff's attempt to file new documents on the day the suit was slated for hearing. If the court would hear the suit, this would amount to a veritable ambush against the Defendant. The Plaintiff's and his advocate's conduct is reprehensible and amounts to abuse of the court process.

Mr. Kinuthia complained that it is only the ELC Registry in Nairobi that insisted on not receiving documents not brought to court less than 3 days before a hearing date. He expressed the view that this requirement had no basis. I wish to bring Mr. Kinuthia's attention to Practice Direction 31 of the Practice Directions concerning the ELC Court which are contained in Gazette Notice No. 5178 of 28<sup>th</sup> July, 2014. The direction reads as follows: -

***“Three days before any hearing, whether of an application or a full hearing, parties must ensure all documents are properly filed and that proper service has been effected.”***

The use of the word **“must”** is of particular significance. The refusal by the ELC registry to accept the filing of documents on the morning of the hearing of this suit had sound and unimpeachable basis.

Nevertheless, in the interest of justice, I find myself with no other alternative but to adjourn the hearing of this suit. I find it necessary, however, to condemn Mr. Kinuthia's client to pay advocate Kingara's costs for today and also to pay costs for today for Mr. Kingara's 2 witnesses who were present in court. Mr. Kinuthia's client is also condemned to pay the Court Adjournment Fees (CAF).

It is so ordered.

Delivered in open court at Nairobi this 27<sup>th</sup> day of **January, 2016** in the presence of: -

Court clerk – Daniel

**P.M. NJOROGE**

**JUDGE**