



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 167 OF 2015

MURIUKI SAMSON MURIITHI.....1ST PLAINTIFF

SERA NJOKI MURIUKI.....2ND PLAINTIFF

VERSUS

JAMES MWANGI GERALD.....)

PLISCILLA NJOKI KIBUCHI.....)

JUSTUS KIMANDU GERALD MBOGO

(Sued on his own behalf and as Administrator of the Estate of

SOPHIA WAMURANGO GERALD.....) DEFENDANTS

MOFFAT NJIURI GERALD.....)

KENNEDY KIMANI WARIUA.....)

RULING

There is a ruling pending herein on the two applications one dated 17th December 2015 and the other a Preliminary Objection dated 11th January 2016. That ruling is due on 6th May 2016.

The 1st plaintiff has however moved this Court by his Notice of Motion dated 7th April 2016 seeking the main prayer that he be allowed to file a further affidavit in support of his application dated 17th December 2015. The main ground is that the further affidavit contains facts and annexures crucial to the plaintiff's case.

The application is opposed and in his replying affidavit sworn on behalf of the other defendants, **JAMES MWANGI GERALD MBOGO** the 1st defendant herein has deponed, inter alia, that the application is incompetent, bad in law and vexatious since this matter is pending a ruling. That this application is therefore only meant to perpetuate this suit while the plaintiffs enjoy interim injunctive orders.

I have considered the application and the response thereto.

It is true that the parties filed their submissions as directed by the Court with respect to the two applications one dated 17th December 2015 and the Preliminary Objection dated 11th January 2016. It is in the interest of justice that proceedings be conducted in an orderly fashion that is predictable. Re-

opening proceedings that have closed is certainly not a step in that direction and it is clearly not in keeping with the overriding objective of the **Civil Procedure Rules** which include the efficient and timely disposal of all Court proceedings. However, a party must be allowed to place before the Court all the relevant material that it wishes to unless the other party will be prejudiced. In any application such as this, the Court will be guided by the greater interest of doing justice to the parties. Reliance will also be placed on **Article 159 (2)(d) of the Constitution**. I have considered that submissions were filed on 7th April 2016 and this Court fixed a ruling date of 6th May 2016. This application was filed on the same day that the Court was informed submissions had been filed i.e. 7th April 2016. There has therefore been no in-ordinate delay in filing this application and a party that needs to be heard should be given an opportunity to place forward his case so long as no prejudice is caused to the other party – **SEBEI DISTRICT ADMINISTRATION VS GASYALI 1968 E.A 300**.

In the circumstances of this case, I am persuaded that the application is well merited. It would be an injustice to deny a party an opportunity to place before the Court what he thinks is material crucial to his case. The defendants can have leave to file further affidavits if necessary and can also be compensated in costs.

This Court therefore makes the following orders:-

1. *The plaintiffs are granted leave to file and serve a further affidavit in respect to their application dated 17th December 2012 within 7 days from to-day.*
2. *The defendants shall have 14 days after service to file any further replying affidavit that they may wish to file.*
3. *The defendants shall have the costs of this application.*
4. *This case will now be mentioned on 30th May 2016 for further directions when a new date for the ruling that was due on 6th May 2016 will be given.*

B.N. OLAO

JUDGE

27TH APRIL, 2016

Ruling delivered in open Court this 27th day of April 2016

Mr. Ngangah for Ms Thungu for Applicants present

Mr. Chomba for Respondents absent.

B.N. OLAO

JUDGE

27TH APRIL, 2016