



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 70 OF 2012**

**DAVID SUGUT ..... 1ST PLAINTIFF**

**EDWARD K. CHUMA.....2ND PLAINTIFF**

**VERSUS**

**MERCELA CHEPTOO CHUMA.....DEFENDANT**

**R U L I N G**

1. During the hearing of the defence case, Mr. Bosek for the defendant sought to introduce evidence of a video recording but this was objected to by Mr. Kibii for the plaintiffs. Mr. Kibii contended that the defendant had filed a further list of exhibits on 24/2/2016 without leave of the court. The further list of exhibits is the one which listed the video recording and document examiner's report.
2. Mr. Kibii contended that the documents were being introduced long after the plaintiffs had closed their case and that it will be prejudicial to the plaintiffs' case if the documents were to be allowed. Mr. Kibii further contended that the video recording which was sought to be introduced had not been served upon the plaintiffs and that there was no certificate accompanying the video recording as required by the Evidence Act. He therefore urged the court to expunge the further list of documents from the record.
3. Mr. Kibii relied on *Milimani ELC No. 531 of 2013* between *Daudi Samuel Sumba & Another - vs- Pentoville Holdings Limited* and *Eldoret ELC No. 975 of 2012 Johana Kipkemei Too -vs- Hellen Tum*.
4. Mr. Bosek while admitting that he had not sought leave of the court to file a supplementary list of documents argued that Mr. Kibii was equally guilty of what he was objecting to in that he too filed a supplementary list of witnesses on 29/10/2013 without leave of the court. He argued that he did not understand the ruling in *ELC No. 531 of 2013* and that *Eldoret ELC No. 975 of 2012* was distinguishable from the current case.
5. I have considered the objection raised by Mr. Kibii and the response to the same by Mr. Bosek. The Civil Procedure Rules are clear on the issue of filing of documents. The purpose of filing documents is to give notice to the other party on the opponent's case. The rules require that documents be filed in advance before the hearing and where there is need for filing any further documents, leave to do so has to be sought.
6. In the instance case, the plaintiffs have closed their case. They closed their case on 30/9/2015. The list of documents being objected to was filed on 24/2/2014 without leave of the court. The video recording which is introduced by the further list of documents was not served upon the plaintiffs and it was never even put to them during the hearing. The video recording is categorized under electronic evidence. According to **Section 106 B of the Evidence Act**, a certificate is necessary for any admission of such kind of evidence. In this case there is no such certificate filed. If the video evidence was to be allowed, it will be very prejudicial to the plaintiffs' case as the same has closed and they will not have an opportunity to comment on the same.
7. The defendant is out to build her case after hearing what the plaintiffs had said. This cannot be allowed as to do so will prejudice the plaintiffs' case. It is like trial by ambush. The defendant had

the opportunity to lay her case before the hearing commenced. She cannot seek to introduce documents after the closure of the plaintiffs' case. I agree with the two decisions given by Mr. Kibii. I proceed to expunge the list of documents filed by the plaintiff on 24/2/2016.

It is so ordered.

Dated, signed and delivered at Kitale on this **8th** day of **June, 2016**.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Kibii for plaintiffs and the defendant. Court Assistant Isabellah.

**E. OBAGA**

**JUDGE**

**8/6/2016**