



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELCC NO. 174 OF 2015(O.S)**

**NITA SUBHASH GANATRA.....APPLICANT**

**VERSUS**

**SUBHASH CHHHOTALAL GANATRA.....RESPONDENT**

**RULING**

The applicant gave her evidence in chief before GBM Kariuki J(as he then was) on 15<sup>th</sup> March 2012. She was thereafter stood down to 7<sup>th</sup> June 2012 for cross-examination. On 6<sup>th</sup> June 2012, the respondent filed supplementary bundle of documents. On 17<sup>th</sup> September 2012, the respondent filed a further supplementary bundle of documents. The applicant was not happy with this development and filed a notice of preliminary objection seeking to expunge from the court record the said documents which had been filed without leave of the court and after she had given her evidence in chief. In a ruling delivered on 25<sup>th</sup> July 2014, the court (Kimaru J.) dismissed the applicant's preliminary objection and stated among others that for proper adjudication of the suit, it was only fair that the respondent be allowed to rely on the said supplementary bundles of documents.

What is now before me is the applicant's Notice of Motion application dated 1<sup>st</sup> February 2016 seeking orders that she be recalled to comment on the said bundle of documents which were lodged in court by the respondent after she had given her evidence in chief. The application is supported by the affidavit and supplementary affidavit sworn by the applicant on 1<sup>st</sup> February 2016 and 2<sup>nd</sup> March 2016 respectively wherein the facts outlined above have been brought out.

The application was opposed by the respondent through grounds of opposition dated 23<sup>rd</sup> February 2016 and a replying affidavit sworn on 24<sup>th</sup> February 2016. The respondent contended that the documents in question were made available to the applicant in Divorce Cause No. 57 of 1992 and as such the application herein is an abuse of the court process intended merely to delay the hearing of this case. The respondent contended that the application herein is intended to circumvent the ruling of 25<sup>th</sup> July 2014 which allowed him to rely on the said supplementary bundle of documents. The respondent contended further that the application herein which was filed one and a half years after the ruling of 25<sup>th</sup> July 2014 is intended to frustrate the hearing of the suit.

When the application came up for hearing on 8<sup>th</sup> March 2016, the advocates for the parties indicated to the court that they wished to rely entirely on their respective affidavits in support of and in opposition to the application. The issue which this court has been called upon to determine is whether the court should re-open the applicant's evidence in chief and allow the applicant to comment on the supplementary

bundle of documents which were filed herein by the respondent after the applicant had given her evidence in chief.

It is not in dispute that the respondent's bundle of documents which the applicant wishes to comment on were filed after the applicant had given her evidence in chief. The applicant is yet to be cross-examined. The applicant had objected to the filing of the supplementary bundle of documents by the respondent on the grounds that she would be prejudiced by the same as she would not have an occasion to comment on the same. In a ruling I have referred to herein earlier that was delivered on 25<sup>th</sup> July 2014 on the applicant's application to have the respondent's supplementary bundle of documents expunged from the court record, Kimaru J. while dismissing the application had observed that the applicant could not suffer any prejudice because the court could allow her to re-open her testimony in chief to enable her comment on the supplementary bundle of documents and further, that the applicant would have an opportunity to interrogate the documents during the respondent's cross-examination.

With the said observation by Kimaru J., I am surprised that the respondent has decided to oppose the present application by the applicant. I am of the opinion that in the circumstances of this case, the applicant cannot be denied the right to re-open her evidence in chief for the purposes of commenting on the documents which the respondent placed on the court record after she had given evidence. The respondent having been allowed to introduce the said documents after the applicant had closed her case, it would only be fair that the applicant be afforded an opportunity to comment on the same.

The reasons advanced by the respondent for opposing the applicant's application have no merit. What the applicant is seeking is justice which cannot be sacrificed at the altar of expediency. There is no indication from the record that the applicant has contributed to the delay in the prosecution of this suit. The respondent has to take full blame for the present application. The respondent having filed supplementary bundle of documents after the applicant had given her evidence in chief cannot be heard to say that he will suffer prejudice if applicant is allowed to comment on the said documents because that would lead to a delay in the hearing of the suit. I am not satisfied that the respondent would suffer any prejudice if the applicant's application is allowed.

Due to the foregoing, the application dated 1<sup>st</sup> February 2016 is allowed in terms of prayer 2 thereof. The costs of the application shall be in the cause.

**Delivered and Signed at Nairobi this 1st Day of July, 2016**

**S. OKONG'O**

**JUDGE**

**In the presence of**

Mr. Kibanya                      for the Applicant

Ms. Samuakay                    for the Respondent

Kajuju                              Court Assistant