



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 102 OF 2014

MARK SIKALABO OPICHOPLAINTIFF

VERSUS

WILFRED WAFULA OPICHO.....1ST DEFENDANT

TIM JUMA OPICHO.....2ND DEFENDANT

MOHAMMED ABDALA ASELI.....3RD DEFENDANT

RULING

1. When this case came up for hearing on 29/9/2016, counsel for the first and second defendants raised two issues. The first issue was regarding the filing of witness statements by two witnesses for the plaintiff. Mr. Nyakundi argued that the statements had been filed out of time which the court had granted. The second issue was that one of the witnesses had filed a statement as a witness for the plaintiff and at the same time as a defence witness.

2. Mr. Okile for plaintiff while conceding that he had indeed filed witness statements outside the time granted argued that that fact alone should not make the court to reject the statements. He also denied from the bar that one of the witnesses had recorded two statements. He contended that one of the witnesses namely William Wafukho had only recorded a statement in support of the plaintiff's case.

3. I have gone through the record and notice that from the beginning, the plaintiff did not record a statement. When this fact was brought to the attention of the court on 6/5/2015, the court granted the plaintiff leave to file witness statements. The defendants were also granted leave to file further list of documents. The case was adjourned to 28/7/2015.

4. When the case came up for hearing on 28/7/2015, the plaintiff had not filed statements of his witnesses or his own statement. His counsel indicated that they were not going to file any statements and that they were going to rely on the evidence of the plaintiff. I found this to be unprocedural. I directed that the plaintiff file and serve his statement within 14 days failing which, his case was to stand dismissed.

5. The plaintiff did not file and serve the statement within the time given. He filed the same on 23/10/2015 almost three months late. This notwithstanding, the case took off on 26/10/2015. When the hearing resumed on 16/5/2016, the plaintiff sought to bring a witness whose statement had been filed without leave of the court and his statement had not been served upon the defendant. His name was also not on the list of witnesses. His statement was expunged from the record and he was not allowed to give evidence.

6. Mr. Okile then applied for adjournment and sought leave to file statements of witnesses who were on the list of witnesses but had not recorded their statements. Leave was granted as prayed but with condition that the same had to be filed and served within 7 days. If this was not done, the court stated that those witnesses will not be allowed to testify. The statements were not filed within the time given. They were filed one month later. One of the witnesses who had recorded a statement in support of the defence this time filed a statement in support of the plaintiff. The two statements are contradictory.

7. It is clear that the plaintiff has ignored the directions of the court before. He is also causing confusion by luring a defence witness to his side. This is unacceptable. The court cannot allow him to proceed without complying with the directions of court. I find that the statements of the witnesses were filed contrary to the directions of the court. The statements cannot be allowed to stand. The same are hereby expunged from the record. The upshot of this is that they will not be allowed to testify. This is what the orders of 16/5/12015 stated.

It is so ordered.

Dated, signed and delivered at Kitale on this **10th** day of **October, 2016**.

E. OBAGA

JUDGE

In the presence of Mr. Nyakundi for the 1st and 2nd defendant. Court Assistant - Isabellah.

E. OBAGA

JUDGE

10/10/2016