



**Registered Trustees of Telposta Pension Scheme v Chief Lands Registrar & another
(Land Case E011 of 2022) [2024] KEELC 654 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE E011 OF 2022
E ASATI, J
FEBRUARY 15, 2024**

BETWEEN

REGISTERED TRUSTEES OF TELPOSTA PENSION SCHEME PLAINTIFF

AND

CHIEF LANDS REGISTRAR 1ST DEFENDANT

FREDRICK MESHACK OPONDO 2ND DEFENDANT

RULING

1. This Ruling is in respect of the application dated 19th October, 2023 seeking for orders that leave be granted to the Plaintiff to file its Supplementary bundle of documents for consideration before the hearing and that the Supplementary list and bundle of documents dated and filed on 13th October, 2023 be deemed to be properly on record.
2. The application was based on the grounds that Plaintiff came across a crucial document namely; a copy of the survey report with respect to the suit property and seeks to introduce it as an exhibit to be produced in the case.
That it is absolutely necessary that the document be placed before court for a fair and just determination of the issues before the court. That as none of the parties has been heard in the case, the Defendants will not be prejudiced as they will have a corresponding opportunity to file their documents in response.
3. The application was supported by the contents of the Supporting Affidavit of Gloria Mbevi Advocate sworn on 19th October, 2024 and the annexure thereto.
4. The application was opposed vide the contents of the Replying Affidavit of Ambassador Aggrey Shitsama Shikanga Advocate sworn on 24th October, 2023. The Respondent's case was that pleadings have long been closed and a hearing date was in place. That the report sought to be presented is laced



with a myriad of hearsay evidence and the same cannot be produced since it will amount to admitting hearsay evidence contrary to the law. That there is no witness statement taken of the person who authored the document. That the application is calculated at delaying a speedy disposal of the suit.

5. The application was argued orally on 7th December, 2023.
6. I have considered the application and the grounds advanced in opposition thereof. The law governing filing of copies of documents which parties intend to rely on in suits is found in Order 3 Rule 2 in the case of a plaintiff and Order 7 Rule 5 in case of a defendant. Order 3 Rule 2 requires that copies of such documents be filed with or accompany the plaint at the time of filing the suit. Any outstanding matters relating to such documents including filing of further list of documents is supposed to be handled during the pre-trial directions and case conferences under Order 11 of the Civil Procedure Rules. In this case, the application seeking to introduce more documents to be relied upon by the Plaintiff was filed much after the case conference and after a hearing date had been taken.
7. The application was brought pursuant to the provisions of Section 3A of the Civil Procedure Act. Section 3A saves the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The application is also anchored on article 159(2)(d) of the Constitution of Kenya which directs the court to administer justice without undue regard to procedural technicalities.
8. What the Plaintiff is seeking is to have the Surveyor's report admitted as part of the Plaintiff's documents to be produced during the hearing. The report ought to have been filed before case conference as per the provisions of Order 3 Rule 2 Civil Procedure Rules. This did not happen. In the case of Britania Sacco v Jambo Biscuits Limited (2018) eKLR the court in allowing production of additional evidence held that the court will allow production of further evidence if, among other things, the other party will not be prejudiced.
9. Noting that the hearing is yet to take place and that the Defendants will have a chance to interrogate the document during production, the court finds that it is in the interest of justice to allow the application. The application dated 19th October, 2023 is therefore hereby allowed as prayed.

Costs to the 2nd Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU AND DELIVERED THIS 15TH DAY OF FEBRUARY, 2024 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:-

Maureen: Court Assistant.

Munyira for the Plaintiff/Applicant.

Moraa holding brief for Essendi for the 1st Respondent

No appearance for the 2nd Respondent

