



Shah v Chief Lands Registrar & 5 others (Environment and Land Case Civil Suit 593 of 2016) [2024] KEELC 5582 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5582 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 593 OF 2016**

**LN MBUGUA, J
JULY 18, 2024**

BETWEEN

MAHESH SHAH PLAINTIFF

AND

CHIEF LANDS REGISTRAR 1ST DEFENDANT

AGNES WAMBUI MANJERU 2ND DEFENDANT

THE INSPECTOR GENERAL OF POLICE 3RD DEFENDANT

DIRECTOR OF CRIMINAL INVESTIGATION 4TH DEFENDANT

THE NATIONAL LAND COMMISSION 5TH DEFENDANT

THE ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. Before me is the application dated 6.5.2024 filed by the 2nd defendant seeking orders that their 2nd list of documents marked “AWM1” be admitted in evidence and that their witness, one Agnes Wambui Manjeru be recalled to give further evidence. The application is premised on the grounds in support of the application and the supporting affidavit of the applicant.
2. The applicant avers that she testified on 24th of November 2023, and by then she believed that she had all the documents she was to rely upon. She had given all her documents to advocate Kimandu Gichohi who passed on. It was only recently that her current advocate stumbled upon the documents in question which had been locked away in a cabinet. Upon this discovery, it became necessary to have the said documents introduced in court.
3. On 13.5.2024, counsel for the plaintiff as well as counsel for the 1st, 3rd, 4th and 6th defendants indicated that they would be opposing the application. The court then gave strict directions on the prosecution



of the application, in which, the respondents were to file and serve their responses by 27.5.2024, the applicant was to file and serve their submissions and any further affidavit by 11.6.2024, while the respondents were to file and serve their submissions by 25.6.2024. The plaintiff filed a replying affidavit within time but no other responses were filed. All the submissions were filed out of time by the applicant and the plaintiff.

4. In the Supreme Court of Kenya Case of *Dande & 3 others v Director of Public Prosecutions & 2 others* (Petition 4 (E005) of 2022) [2022] KESC 23 (KLR) (19 May 2022) (Ruling), the court stated as follows in regard to late filing of documents;

“This practice is irregular and unacceptable. We have, in this respect, not taken into consideration in this ruling, submissions irregularly filed....”.

5. Taking que from the aforementioned decision, the submissions of the applicant and the plaintiff filed out of time hereby stand as expunged.

6. I have nevertheless considered the arguments raised for and against the application in terms of the application itself and the replying affidavit of the plaintiff. The provisions of Section 146 (4) of the *Evidence Act* provides that:

“The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively”.

7. Additionally, Order 18, Rule 10 *Civil Procedure Rules*, 2010 provides:

“The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force; put such questions to him as the court thinks fit”.

8. If an application is made to reopen the case on the basis that new or additional evidence is available, it will be relevant, at that stage, to inquire why the evidence was not called at the hearing: see *Samuel Kiti Lewa v Housing Finance Co. of Kenya Ltd & another* [2015] eKLR, *Rajni Kant Natboo v Edward Nthuli & 4 others* [2020] eKLR.

9. To start with, the applicant makes a general sweeping statement that “ it is only recently that my current advocate managed to stumble across the documentation locked away in a cabinet.....”. The question is “ how recent!?”. The applicant has not found it necessary to give the court the actual details of the alleged discovery. Neither has she found it expedient for the person who made the discovery to make a solemn affirmation of those facts.

10. It is also crystal clear and as put forth by the plaintiff that pre-trial directions in this matter were undertaken severally before the actual hearing. To this end, the hearing date of 20.7.2022 was converted to a pre-trial date, and so was the subsequent date of 8.12.2022 when the court gave a self executing order to the effect that “no documents filed outside the given timelines shall be accepted”.

11. And when the trial commenced in October 2023 and continued all the way to the month of November, the court indeed took considerable amount of time in ascertainment of the documents to be relied upon. Further, during this time of the hearing, the plaintiff’s case was closed, while defence case was partly heard. None of the parties raised any issue relating to “missing documents” until several months later when the current application was filed.



12. The provisions of Section 1A of the *Civil Procedure Act* provides that;

- “(1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”.

13. While the provisions of Section 1B thereof stipulates that;

- “(1) For the purpose of furthering the overriding objective specified in Section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
 - a. The just determination of the proceedings;
 - b. The efficient disposal of the business of the Court;
 - c. The efficient use of the available judicial and administrative resources;
 - d. The timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) The use of suitable technology.”

14. Thus this court has a statutory mandate to consider the overriding objective set out in the aforementioned statute. To this end, the court takes into consideration the notion of procedural and efficiency of justice. Procedural justice concerns the fairness, consistency and the transparency of the process, while efficiency of justice is done at reasonable costs and within reasonable time.

15. In the case of *Moschion v Mwangi* (Environment & Land Case 350 of 2018) [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling), the court while emphasizing the importance of upholding the overriding objective in a trial cited the case of *Mavuno Industries Limited & 2 Others Vs Keroche Industries Limited* [2012] eKLR, where it was noted as follows;

“That courts must warn litigants and counsels that the courts are now on the driving seat of justice, where the courts have a new call to use the overriding objective to remove all the cobwebs hitherto experienced in the civil process and to weed out as far as is practicable the scourge of the civil process, starting with unacceptable levels of delay and cost in order to achieve resolution of disputes in a just, fair and expeditious manner”.

16. Noting that this matter is at an advanced stage of the hearing, taking into account that pretrial directions had been taken on several occasions and that there is no disclosure as to when the new evidence was discovered, then, I find that the application dated 6.5.2024 is not merited, the same is hereby dismissed with costs to the plaintiff.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Onyango Opiyo for Plaintiff

M/s Muigai holding brief for Wangui for 2nd defendant Applicant

A.Kamau for 1st, 3rd and 5th Defendants

Court assistant: Eddel

