



REPUBLIC OF KENYA



Supplies Services Limited v Kenya Airports Authority (KAA) & 7 others (Environment & Land Case 388 of 2021) [2024] KEELC 13444 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13444 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 388 OF 2021**

**MD MWANGI, J
NOVEMBER 14, 2024**

BETWEEN

SUPPLIES SERVICES LIMITED PLAINTIFF

AND

KENYA AIRPORTS AUTHORITY (KAA) 1ST DEFENDANT

THWAMA ENGINEERING SERVICES LTD 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

PUMWANI SERVICE STATION LIMITED 4TH DEFENDANT

BERNARD NYAKUNDI MAKORI 5TH DEFENDANT

PUAL NJUGUNA MBURU 6TH DEFENDANT

TERRAZO ENTERPRISES LIMITED 7TH DEFENDANT

DIRECTOR OF SURVEYS 8TH DEFENDANT

RULING

(In respect of the oral application by the 7th Defendant seeking leave to issue a notice to produce to the 8th Defendant)

1. This ruling is in respect to the oral application by the 7th Defendant seeking leave to issue a notice to produce documents to the 8th Defendant made upon the close of the re-examination of the first Defence witness.
2. Counsel for the 7th Defendant stated that arising out of the evidence of DW1, he found it necessary to seek leave of the court to issue a notice to produce documents to the 8th Defendant. He did not specify the documents he wished the 8th Defendant to produce.



3. The application was vehemently opposed by the Senior State Counsel, Mr. Allan Kamau representing the 8th Defendant alongside the 1st and 3rd Defendants. He submitted that no basis had been laid before the Court to justify the request. He further asserted that information arising out of cross-examination cannot be the basis for such an application.

Determination

4. Ideally, a party in a suit is at liberty to issue a notice to produce documents to any other party(s) without leave of the court before the closure of pre-trial procedures. Order 11 of the Civil Procedure Rules requires parties to file their documents and witness statements at the pre-trial stage. Thereafter, pre-trial conferences are held where issues as the one now before the court are settled. Order 11 Rule 3(1) of the Civil Procedure Rules provides that:

“The purpose of a case management conference shall be to

- (a) Promote the expeditious disposal of case;
 - (b) Afford the parties an opportunity to use alternative dispute resolution mechanisms to determine the case;
 - (c) Afford the parties an opportunity to settle the case;
 - (d) Determine any other matter relating to the management, hearing and disposal of the case;
 - (e) Deal with pre-trial applications at first instance or formulate a timetable to deal with them as the court may deem fit; and
 - (f) Identify the issues for determination.
5. Once a hearing begins, there should be no surprises or applications for post-trial discoveries. A hearing unlike a game of chess, requires parties to place all their cards on the table before the hearing begins.
 6. Odunga, J (as he then was) in the case of *Interactive Gaming & Lotteries Ltd – vs – Flint EA Ltd) & 2 Others* (2013) eKLR, stated that the provisions of Order 11 of the Civil Procedure Rules, are meant to ensure that parties to a suit disclose their evidence upfront before the commencement of the hearing of the suit in order to avoid trial by ambush. He made reference to his earlier decision in *National Bank of Kenya Ltd – vs – John Aswani Litondo & Another*, (NBI HCCC 171 of 2016, where he had stated that;

“The rationale of Order 11 is to discourage trial by ambush and ensure that the provisions of Section 1A and 1B of the *Civil Procedure Act* are meaningfully implemented to create a level playing field for all the parties before the Court by ensuring the principle of equality of arms is maintained and as far as practical to place the parties on equal footing. To conceal documents until after the Plaintiff’s case is closed was the kind of mischief that the rules intended to cure trial by ambush is no longer acceptable in civil litigation.”

7. The application by the 7th Defendant is not only unmerited but also likely to derail the seamless hearing of this case. It is hereby disallowed. The court makes no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024.



M.D. MWANGI

JUDGE

In the Virtual Presence of: -

Mr. Ingutya for the Plaintiff

Mr. Allan Kamau for the 1st, 3rd & 8th Defendants

Mr. Ndegwa h/b for Mr. Nyiha for the 4th Defendants

Ms. Muthoni h/b for Mr. Michuki for the 7th Defendant

N/A for the 2nd, 5th & 6th Defendants

Court Assistant: Yvette

M.D. MWANGI

JUDGE

