



REPUBLIC OF KENYA



KENYA LAW
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**Cheptogoch v Cheserem (Environment & Land Case 232 of 2018)
[2023] KEELC 741 (KLR) (13 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 232 OF 2018
FM NJOROGE, J
FEBRUARY 13, 2023
FORMERLY CIVIL SUIT CASE NO: 88 OF 2008**

BETWEEN

RODAH TERIKI CHEPTOGOCH APPLICANT

AND

KIPROP KIPSANG CHESEREM RESPONDENT

RULING

1. A receipt for Kshs 10,810/= dated April 10, 2022 is proposed to be added to the defendant's list and bundle of documents dated May 31, 2022 and filed on June 3, 2022. It is not that the defendant had not filed any documents; it is that the defendant's counsel avers that the client had kept all the documents with him, that there are many copies of receipts in the bundle, and that by inadvertence counsel omitted to include the document in the list and bundle.
2. I have considered the application as well as Ms Sabaya's objection to the effect that:
 1. This case being this old, there could have been no inadvertence of this kind;
 2. There is another similar receipt whose copy is in the bundle, for the same amount.
3. The second limb of the objection has been dealt with, and I think quite effectively by Mr Chebii when he rose up in reply and stated that it is no surprise that there were 2 receipts of the same amount since there are 2 plots involved in the present suit which are of same size which thus required payments of the same stand premium. I will accept that explanation.
4. The first limb of the objection however seems to suggest that the omission to avail and include the proposed receipt in the bundle and list may have not been inadvertent after all. Mr Chebii has explained that there were 2 plots requiring payment as above and in the absence of the rebuttal to that assertion I am unable at present to see what the defendant would gain by concealing his own evidence, and I think,



in so far as the disclosures have been made in this case at present, he would stand to suffer prejudice if he did so. He does not wish to suffer any prejudice and has applied for inclusion of that receipt in the bundle now.

5. Under article 159 (2) (d) of the Constitution it is recognized that we have rules of procedure to be followed and in my view parties are required to follow them strictly if only to enable court to midwife justice effectively, expeditiously and justly.
6. It is true some parties may at times attempt to subvert the rules of procedure and thus occasion the other side much loss of time or prejudice unless checked, but I also think that rules of procedure are not cast in stone and article 159(2) (d) of the Constitution allows this court to overlook rules of procedure for the sake of delivery of substantive justice.
7. This is not to say that rules of procedure should be broken willy-nilly by every litigant so that the grace afforded by article 159 (2) (d) of the Constitution may abound in such an environment of obstreperous conduct.
8. Rather, it means that where there has been inadvertence, genuine mistake or other sufficient reason the court may allow anything that appears to go against the rules of procedure where it is commenced that it is in the interest of doing substantive justice to the parties.
9. I have seen the original receipt proposed to be added to the defendant's bundle in this case and Mr Chebii's submissions have persuaded me that there is likelihood that the document was omitted by means of some inadvertence, for indeed the original documents in a case are normally handled and stored by the litigants before they are handled by their advocates later on when disputes begin to arise. In those circumstance, I think a case of possible inadvertence has been made and on a balance of probabilities. Consequently, I allow Mr Chebii's application. A copy of the receipt dated April 10, 2002 shall be furnished to Ms Sabaya forthwith before parties part ways today.
10. I have considered that the objection at hand has taken up all the time that the parties had been allocated today for the hearing of this case, at least for this morning, and I order that this hearing is now adjourned to March 21, 2023.
11. The defendant shall bear the costs of today in any event as the plaintiff is innocent of any wrongdoing today.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 13TH DAY OF FEBRUARY, 2023

MWANGI NJOROGE

JUDGE, ELC, NAKURU

