



Muli & another v Nakumama & 3 others (Environment & Land Case 184 of 2017) [2023] KEELC 16973 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16973 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 184 OF 2017
LC KOMINGOI, J
APRIL 27, 2023**

BETWEEN

SILVANUS MUSYOKI MULI 1ST PLAINTIFF

NAOMI KANYUA MUSYOKI 2ND PLAINTIFF

AND

KAPOSHI OLE NJOROGE NAKUMAMA 1ST DEFENDANT

JONATHAN KAPOSHI 2ND DEFENDANT

NTEENE OLE KAPOSHI 3RD DEFENDANT

KENNETH OBIMBO ODHIAMBO 4TH DEFENDANT

RULING

1. This is an objection raised by Mr Achilla seeking to prevent Mr Kali from cross-examining PW 1 (the 1st plaintiff) after he had concluded his cross-examination.
2. The grounds are;

That at the end of the testimony of PW1, Mr Musili who was acting for the 2nd plaintiff, then stated that they wished to associate themselves with the evidence of the 1st plaintiff.

Secondly, that 1st – 3rd defendants will be prejudiced as they will not have a chance to further cross-examine the witness (PW1).
3. He also submitted that the 2nd plaintiff did not file a separate affidavit in order to give her a right to cross-examine the 1st plaintiff as at the set of this case she stated that she was relying on the affidavit sworn by the 1st plaintiff.
4. Mr Wandaka submitted that the 2nd plaintiff ought to be allowed to cross examine the 1st plaintiff.



5. Mr Kali submitted that Mr Musili's sentiments did not waive the 2nd plaintiff's right to cross-examine the 1st plaintiff.
That it is the 2nd plaintiff's constitutional right to cross-examine the 1st plaintiff.
He prays that the objection be overruled.
6. I have considered the rival submissions. The question before this court is whether the objection is merited.
7. I have gone through the court record. Upon being served with the originating summons, the 2nd plaintiff (Naomi Kanyua Musyoki) signed an authority to act dated July 17, 2012 giving the 1st plaintiff authority to represent her and give evidence on her behalf.
8. Attached to the originating summons is the affidavit sworn by the 1st plaintiff and the documents.
9. There is a Notice of change of Advocate dated February 6, 2018 filed by M/s EK Mutua & Co Advocates stating that the said firm was now acting for the 2nd plaintiff.
10. I have also gone through the typed proceedings. On the March 7, 2017 the 2nd plaintiff was directed to regularize her position by filing the relevant documents and witness statements within 7 days.
11. This was not done as there are no documents filed by the 2nd plaintiff to which she can base her cross-examination. As things stand, only the affidavit sworn by the 1st plaintiff is there on record.
12. I also note that after the 1st plaintiff had testified, Mr Musili for the 2nd plaintiff stated that they associated themselves with the evidence of the 1st plaintiff.
13. There is nothing to show that Mr Musili did not have instructions from the 2nd plaintiff then.
14. I find that there is no known procedure in law which would enable the 2nd plaintiff to cross-examine the 1st plaintiff under these circumstances. She has not filed a separate affidavit. The 1st to 3rd defendants counsel has concluded his cross-examination.
15. I find merit in the objection and the same is upheld.

DATED SIGNED AND DELIVERED VIRTUALLY ON 27TH APRIL, 2023 AT KAJIADO.

L. KOMINGOI

JUDGE.

