



**Nairobi House Limited v Koinange; Koinange (Plaintiff to the Counterclaim);  
Nairobi House Limited & 4 others (Defendant to the Counterclaim) (Environment  
& Land Case 434 of 2017) [2025] KEELC 1490 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1490 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 434 OF 2017  
OA ANGOTE, J  
MARCH 24, 2025**

**BETWEEN**

**NAIROBI HOUSE LIMITED ..... PLAINTIFF**

**AND**

**LENAH CATHERINE KOINANGE ..... DEFENDANT**

**AND**

**LENAH CATHERINE KOINANGE ..... PLAINTIFF TO THE COUNTERCLAIM**

**AND**

**NAIROBI HOUSE LIMITED ..... DEFENDANT TO THE COUNTERCLAIM**

**TRENTON (K) LIMITED ..... DEFENDANT TO THE COUNTERCLAIM**

**THE HON. ATTORNEY GENERAL . DEFENDANT TO THE COUNTERCLAIM**

**THE CHAIRMAN NATIONAL LAND COMMISSION .... DEFENDANT**

**TO THE COUNTERCLAIM**

**DIAMOND TRUST BANK LIMITED .... DEFENDANT TO THE  
COUNTERCLAIM**

**RULING**

1. Counsel for the Plaintiff has objected to the Attorney General, who is appearing on behalf of the 3<sup>rd</sup> Defendant, to cross-examine the witnesses or to call any witnesses in this matter. Counsel for the Plaintiff has argued that as at the time the hearing commenced on 07/02/2021, the Attorney General had neither entered appearance nor filed a Defence. according to counsel, although the pleadings and documents by the Attorney General are all dated 05/01/2022, they were not filed until May, 2024,



way after the trial had commenced and without the leave of the court. Counsel argued that the filing of pleadings and documents after trial had commenced and without leave of the court is irregular and prejudicial to the Plaintiff's case.

2. In response, both Mr. Ouma for the Defendant, and Mr. Kamau, for the Attorney General, argued that this court did allow the Attorney General to file the pleadings and documents dated 06/01/2022; that when the matter came up for hearing on 07/02/2024, the only issue that arose was the pagination of the bundle of documents by the Attorney general and that after the court confirmed that the Attorney General's documents and pleadings were not in the CTS, it allowed the AG to file the same, having already served them. The AG has argued that a party's pleadings and documents should not be thrown out considering that the court should be minded to dispensing substantive justice.
3. I have looked at the record. The trial commenced in this matter on 07/02/2024 and 08/02/2024. On 08/02/2024, when the matter came up for further cross-examination, Ms Masinde, who was holding brief for Mr. Allan Kamau for the Attorney General, informed the court that counsel required time to peruse documents before he could cross-examine PW1. The court adjourned the matter to 24<sup>th</sup> and April, 2024.
4. On the said date, the court did not sit. The matter was fixed for 23/05/2024. On 23/05/2024, counsel for the Plaintiff informed the court that he had not been served with the Memorandum of Appearance and Defence by the Attorney General. He objected to the cross-examination of the witness by the AG in the absence of pleadings. On the said date, the court confirmed that indeed, the AG's Memorandum of Appearance and Defence was not on record. The court ruled that in the absence of the Memorandum of Appearance and Defence, counsel for the Attorney General could not cross-examine PW1.
5. PW1 was re-examined by his advocate and closed his case on that day. The court did not give the Attorney General leave to file the pleadings. The matter proceeded for defence hearing on the same day, and adjourned to 03/10/2024. On the said date, the mater was adjourned on the ground that the Plaintiff's advocate was bereaved. On the said date, Mr. Allan Kamau for the AG informed the court that he had filed his documents. The court fixed the matter for hearing for 18/11/2024 without commenting on the sentiments of Mr. Allan Kamau. On 18/11/2024, the matter did not proceed for hearing. The matter was slated for hearing for 23/03/2025 (today).
6. From the record, the court did not grant leave to the AG to file his pleadings out of time. Indeed, the CTS shows that the Attorney General filed the Memorandum of Appearance and Defence and a bundle of documents and statements for the first time on 23/05/2024, way after the Plaintiff had closed its case.
7. Considering that the timelines for filing Memorandum of Appearance and Defence are strictly provided for in the Civil Procedure Rules, and the Plaintiff having testified and closed its case before the AG's pleadings and documents were filed, I find the same to be irregularly on the court record.
8. Indeed, the documents were filed without the leave of court. Allowing the pleadings and documents on record after the Plaintiff has closed its case is not only prejudicial, but against the rules that govern civil proceedings.
9. Therefore, although the documents are dated 5<sup>th</sup> January, 2022, the first time they appeared on the record of the court was on 223/05/2024. That being so, and for the reasons I have given, I expunge the Memorandum of Appearance, the Defence and the bundle of documents filed by the AG on behalf of the 3<sup>rd</sup> Defendant on 23/05/2024. In the circumstances, the 3<sup>rd</sup> Defendant does not have the right to cross-examine any witness or call witnesses.



**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Nyachoti for Plaintiff

Mr. Ouma for Defendant

Mr. Allan Kamau for 3<sup>rd</sup> Defendant

Mr. Kisinga for 6<sup>th</sup> Defendant

Ms Masinde for National Land Commission

Court Assistant: Tracy

