



**Abdullahi & another v Mohamed & 2 others; Nairobi City County
(Interested Party) (Environment & Land Case 725 of 2016 & 325 of 2019
(Consolidated)) [2023] KEELC 18100 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18100 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 725 OF 2016 & 325 OF 2019 (CONSOLIDATED)
EK WABWOTO, J
JUNE 8, 2023

BETWEEN

HABIBA NYAMBURA ABDULLAHI PLAINTIFF

AND

SHEIKH ABDULLAHI MOHAMED DEFENDANT

AND

NAIROBI CITY COUNTY INTERESTED PARTY

AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 325 OF 2019

BETWEEN

MELIHUN HASSEN WORSAME PLAINTIFF

AND

HABIBA NYAMBURA ABDULLAHI 1ST DEFENDANT

NAIROBI CITY COUNTY 2ND DEFENDANT

RULING

1. Habiba Nyambura Abdullahi moved this court vide an application dated March 21, 2023 seeking leave to be represented in the consolidated suits by one Silvyia Wanjiru Meri who has a registered Power of Attorney for the said purpose.



2. The application was premised on the grounds that she is employed in the United States of America and has challenges attending court to testify in person and hence the reason why she has given Power of Attorney to Silvyia Wanjiru Meri to represent her. The other ground being that she is a widow who needs to support herself together with her children and foreign changes are a challenge to her. The application was also supported by an affidavit sworn by herself on March 21, 2023.
3. The application was opposed by Melihun Hassen Worsame vide a Replying Affidavit sworn on March 31, 2023.
4. Pursuant to the directions issued by this court, it was directed that the application be canvassed by way of written submissions. The Applicant Habiba Nyambura Abdullahi filed written submissions dated May 11, 2023 while the Respondent Melihuh Harsen Worsame filed submissions dated May 15, 2023.
5. The Applicant submitted that order 9 Rule 1 of the *Civil Procedure Rules* permits her to bring the said application and to seek leave of this court to be represented by an agent during trial. She also submitted that she had already given a Power of Attorney to Silvyia Wanjiru Meri since she had already relocated to USA for work. It was also submitted that it will be costly for her to travel to Kenya to attend physical hearings of the matter. She also disputed the Respondent's contention on her identity and existence and whether or not she is infact alive. She submitted that she had exhibited her passport, travel history, her identity card and marriage certificate to confirm the same. She also challenged the Respondent to produce a death certificate to prove anything to the contrary.
6. It was also submitted that the Respondent cannot purport to question her signature as she is not a document examiner. She concluded her submissions by urging the court to allow her application by allowing the appointment of Silvyia Wanjiru Meri to represent her in these proceedings.
7. The Respondent in her written submissions dated May 15, 2023, submitted on the following aspects;
 - a) The issues raised in the suit require the attendance of the Applicant in person and not through a representative.
 - b) The application is an abuse of the court process.
 - c) The application has been brought after an unreasonable delay.
8. On the first issue, it was argued that, the identity of the applicant is one which will require cross-examination during trial. Counsel also outlined the following specific questions that will need to be considered during trial;
 - i. Whether or not the Plaintiff/Applicant Habiba Nyambura Abdullahi exists
 - ii. The character of Habiba Nyambura Abdullahi.
 - iii. The identity of Habiba Nyambura Abdullahi
 - iv. The relationship of Habiba Nyambura Abdullahi with other parties to the suit.
 - v. Whether the Applicant is who she claims to be in ELC Suit No 725 of 2016
 - vi. The Clarification of the disparities in the identification of the Applicant Habiba Nyambura Abdullahi
 - vii. The alleged fraudulent actions of the applicant.
 - viii. The authenticity of the documents presented in regard to the suit property.



9. It was also argued that the application is an abuse of the court process, since the applicant had previously filed and withdrew a similar application which was dated November 10, 2022 but was withdrawn vide a Notice of Withdrawal dated November 10, 2022.
10. The Respondent also argued that the instant application had been brought after an unreasonable delay since it was filed after the consolidated matters had been fixed for hearing and pleadings closed. It was argued that the said application was an afterthought meant to further delay the determination of the consolidated suits. The Respondent urged the court to dismiss the application and reliance was made to the following authorities which were cited; *Trattoria Ltd v Joamimah Wanjiku Maina NBI Misc Application No. 431 of 2013*, *Ruth Kwachimoi & Another v Charles Nalika Chelsti & Another* [2021] eKLR and *Satya Bhama Gandhi v Director of Public Prosecutions & 3 others* [2018] eKLR.
11. Having considered the prayers sought in the application, rival affidavits filed and the written submissions filed by Counsel for the parties, I am of the view that the main issue for determination herein is whether this court should grant leave to the Applicant to be represented in the consolidated suits by one Silvyia Wanjiru Mere who has a registered power of Attorney for the said purpose.
12. The applicant argued that order 9 rules 1 of the *Civil Procedure Rules* permits a party to seek for such orders. The applicant merely seeks to be allowed to have one Silva Wanjiru Merie represent her in the said proceedings for the reasons captured in the earlier part of this ruling, however the same was vehemently opposed by the Respondent.
13. The Respondent argued that application had been made late in the day and further that since the suit raises issues of fraud as pleaded therein it will be important to have the Applicant attend court and be cross-examined therein.
14. I have once again perused the court record and the reasons advanced in support of the application and I am not convinced that the Applicant should be personally exempted from attending to the proceedings of this court in the place of one Silva Wanjiru Merie. In this era of virtual court proceedings any party who is unable to physically attend court proceedings may always move the court where necessary for leave to participate and attend virtually. This is essence does not mean that they can be physically exempted by merely filing a power of attorney.
15. In conclusion and for the reasons explained herein, I find that the application dated March 21, 2023 devoid of merit and the same is dismissed with no orders as to costs.
16. Those shall be the orders of this court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF JUNE 2023.

E.K. WABWOTO

JUDGE

In the presence of:

N/A Applicant.

N/A Respondent.

Mr. Musdaf for Interested party.

Court Assistant – Caroline Nafuna.

E.K. WABWOTO

JUDGE

