

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 231 OF 2015

DR. KAMAL S. GIDDIE.....PLAINTIFF

-VERSUS-

MEHREEN BHATTI.....1ST DEFENDANT

MEHERISH BHATTI2ND DEFENDANT

RULING

- 1) The defendants have sought for an order to have the plaintiff recalled to be cross-examined to clarify certain issues which have arisen as a result of the withdrawal of the case against the 3rd defendant. Mr. Macharia, learned advocate for the 1st and 2nd defendants argued that the withdrawal of the case against the 3rd defendant forced the two defendants to reorganize their line of defence thus requiring the recalling of the plaintiff to be cross-examined.
- 2) Mr. Nyachoti, the plaintiff’s advocate vehemently opposed the application to recall the plaintiff arguing that the defendants have not laid a basis for issuance of such an order. The learned advocate also pointed out that if the plaintiff is recalled it may require the recalling of other witnesses thus delaying the conclusion of the matter.
- 3) I have considered the rival arguments over the question as to whether or not the plaintiff should be recalled for cross-examination. The main ground advanced by the defendants in support of their application is the withdrawal of the case against the 3rd defendant. It is not in dispute that the case against the 3rd defendant was withdrawn on 14.5.2019 when this suit came up for hearing. The 1st and 2nd defendants have indicated that the 3rd defendant is not willing to participate in this matter as their witness. With respect, I agree with the defendants’ argument that their nature of defence has substantially changed due to the withdrawal of the case against the 3rd defendant. I am convinced that it will only be fair if the defendants’ request is granted consequently I grant the order.
- 4) The second prayer by the 1st and 2nd defendant is for an adjournment. They have argued that they would first wish to have the plaintiff recalled and cross-examined before they can present their defence. The plaintiff is of the view that the 1st and 2nd defendants’ request is meant to further procrastinate this matter. In my humble view, I think the 1st and 2nd defendants are justified to see first closure of the plaintiff’s case before beginning to present their defence. I allow the application for adjournment.
- 5) In the end, the hearing of this case is adjourned to 12.7.2019 for further hearing. The plaintiff’s case is reopened and the plaintiff is recalled for cross-examination and re-examination on the aforesaid date. The defence case will also be heard on the same date.

Dated, signed and delivered at Nairobi this 25th day of June, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the 1st Defendant

..... for the 2nd Defendant