



**Njuguna v Nganga & another (Environment & Land Case
310 of 2015) [2023] KEELC 21037 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21037 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 310 OF 2015
FM NJOROGE, J
OCTOBER 26, 2023**

BETWEEN

DUNCAN KINIYITTA NJUGUNA PLAINTIFF

AND

JACKSON CHEGE NGANGA 1ST DEFENDANT

THE LAND REGISTRAR NAIVASHA 2ND DEFENDANT

RULING

1. This is a ruling on an application dated 15/5/2023 filed by the plaintiff under Article 159 of *the Constitution* of Kenya 2010, Sections 1A, 1B, 3A and 5 of the *Civil Procedure Act* cap 21 Laws of Kenya and order 51 of the *Civil Procedure Rules*, 2010. It seeks that leave be granted to the plaintiffs to call 2 more additional witnesses namely Hillary Muturi Kinyitta and Joseph Chege Mwaniki to testify as plaintiff witnesses, that the plaintiff be granted leave to file and serve the witness statements of the said Hillary Muturi Kinyitta and Joseph Chege Mwaniki within fourteen (14) days and corresponding leave be granted to the defence to file and serve any further witness statements within (7) days if need be and the costs of the application and the suit be provided for.
2. On 20/6/2023 when the matter came before the court in the presence of counsels for both the Plaintiff and Defendant, the court directed that the application to be responded to by the Defendant within 14 days and the hearing of the motion to be by way of written submissions. The submissions were to be filed by the Plaintiff within 14 days from the date of service of the response and the Defendant had 14 days from the date of service of submissions of the Plaintiff. The Court has on record the submissions of the Plaintiff and neither any response nor submissions from the Defendant.
3. The thrust of the present application is that the Plaintiff desires to call 2 more witnesses to testify for the Plaintiff's case namely Hillary Muturi Kinyitta and Joseph Chege Mwaniki. The Plaintiff in the supporting affidavit to the Application dated 15/5/2023 deposes that he initially had intended to call



more witnesses whose statements were recorded but who died before the hearing took off, namely Ndungu Nduati (deceased) and Johnstone Kiiyuru (deceased).

4. Section 3A of the CPA provides that: “Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
5. Article 159 (2) of *the Constitution* of Kenya 2010 provides that;

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles:

 - (a) justice shall be done to all, irrespective of status;
 - (b) justice shall not be delayed;
 - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
 - (d) justice shall be administered without undue regard to procedural technicalities; and
 - (e) the purpose and principles of this Constitution shall be protected and promoted.”
6. I have considered the application by the Plaintiff dated 15/5/2023 and his supporting affidavit and I note that the Plaintiff adduced a List of Witnesses dated 28/11/2017 and a further list of witnesses dated 2/11/2022. The list of witnesses are accompanied by the witness statements of Ndung’u Nduati dated 2/11/2022 and that of Johnstone Kiiyuru that is not dated.
7. I agree with the Plaintiff’s counsel that in implementing the spirit of Article 159 of *the Constitution* of Kenya, courts should dispense substantive justice and ensure that there is just, expeditious, proportionate and affordable resolution of civil disputes. The Plaintiff has deponed on oath that the 2 witnesses he intended to call are deceased. However, no copy of their death certificates is attached to the application. that notwithstanding, the Plaintiff’s testimony being uncontroverted by the Defendants, this Court finds that it is in the interest of principles espoused in Article 159 (2) of *the Constitution* that the plaintiff’s motion succeeds.
8. It suffices to state here that the Plaintiff has demonstrated by the application at hand that he deserves the orders sought. Consequently, I find that the application dated 15/5/2023 is merited and I issue the following orders:
 - a. That leave is hereby granted to the Plaintiff to call 2 more additional witnesses namely Hillary Muturi Kinyitta and Joseph Chege Mwaniki to testify as plaintiff witnesses;
 - b. That the plaintiff is hereby granted leave to file and serve the witness statements of the said Hillary Muturi Kinyitta and Joseph Chege Mwaniki within fourteen (14) days
 - c. To balance the scales of justice, corresponding leave is hereby granted to the defence to file and serve any further witness statements it may deem necessary within (7) days if need be.
 - d. There shall be no orders as to costs.



**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26TH
DAY OF OCTOBER, 2023.**

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

