



**Muthondu v Maringa (Environment & Land Case 50 of 2019)  
[2023] KEELC 22545 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22545 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 50 OF 2019  
A KANIARU, J  
DECEMBER 19, 2023**

**BETWEEN**

**SIMON KIMEMIA MUTHONDU ..... PLAINTIFF**

**AND**

**MOSES MUGO MARINGA ..... DEFENDANT**

**RULING**

1. There is no formal or written application upon which this ruling is based. It is a ruling triggered by a request made by counsel for plaintiff when this matter came up for hearing on 14/11/2023. The request was to the effect that the plaintiff, who had already given evidence, should be re-called to produce some documents.
2. The defendants side opposed the request on the ground that the plaintiff was trying to fill some gaps that became manifest when he was cross-examined after giving evidence. But the other side emphasized that the plaintiff only wanted to clarify some things, particularly about his names.
3. I have considered the averments made by both sides. The plaintiff testified on 9/11/2021. The court record shows that on 27/6/2022, the plaintiffs counsel intimated to the court that some documents would be filed. The defendants side did not oppose the filing of the documents. The court was however never told that the plaintiff would be called to give evidence again.
4. The court appreciates that any plaintiff, being the owner of the case, is a very important witness in the proceedings. He should not be easily shut out or blocked from making available the evidence required to build his case. It would therefore be unfair in my view to decline the plaintiff's request.
5. But the plaintiff needs to appreciate that it was a lapse on his part to fail to give all the evidence he needed to make available when he was given the opportunity to testify. The defendant therefore also has a good reason in opposing the re-calling of the plaintiff to give evidence.



6. My considered view is that the plaintiff should be allowed to come back and testify. But he should be made to understand that it is not his undoubted right to do so. For this reason, he should be made to atone for his lapse. In this regard, the court accedes to the plaintiffs request to come back and testify. But this is only on condition that he first pays Kshs. 3,000/- to the defendant. The plaintiff needs to understand that he is the one who stalled the hearing of the case on 14/11/2023. The upshot is that the plaintiff request is granted but only upon payment of Kshs. 3,000/- to the defendant.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2023.**

In the presence of Mutua for M/s Muthoni Ndeke for defendant and in the absence of the plaintiff.

Court assistant: Leadys

**A.K. KANIARU**

**JUDGE**

**19.12.2023**

