

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

HCCC NO. 20 OF 2010

SAMMY KANYINGI MUGEREKI (suing as administrators ad colligenda bona for the Estate of
KAHURIKARANJA.....PLAINTIFF

=VERSUS=

1. JOSEPH MWAURA MURUKI

2. PAUL CHOMBA.....DEFENDANTS

R U L I N G

1. This matter came up for further hearing of the Plaintiff's case on 9th July 2013. PW1 was recalled to produce some of the documents that the defence had objected to on 20th May 2013.
2. After the testimony of PW1, the Plaintiff's counsel realised that the other Plaintiff's witnesses were in court when PW1 was recalled to testify. The Defendant's advocate objected to the witnesses who were in court from being called as Plaintiff's witnesses.
3. I reserved my Ruling for 18th July 2013 and directed the advocates to put in written submissions on the issue.
4. Mr. Okuto, counsel for the Plaintiff supplied to this court a copy of the Court of Appeal decision in Mombasa Criminal appeal NO. 42 of 1997; Kenga Kaingu Mweni & others Vs Republic.
5. In the said case *Omolo, Akiumi and Lakha JJA* held as follows:

“The fact that a prospective witness was in court while others gave evidence did not disqualify that person but went only to the credibility or weight to be given to their evidence. The judge thus erred in disqualifying one of the defence witnesses for having been in court.”

6. The defence counsel has not supplied me with any authority to the effect that a prospective witness who was present in court while another one was testifying is prohibited from giving evidence.
7. I am bound by the decision of the Court of Appeal. In the circumstances, I shall allow the Plaintiff's witnesses who were in court on 9th July 2013 while PW1 was testifying to give their evidence.
8. I shall consider the weight and credibility of their evidence in view of their presence in the court room while PW1 was testifying during the delivery of my Judgment in accordance with the Court of Appeal decision quoted above.
9. The objection by the defence is therefore disallowed.

Dated and Delivered in Malindi this 18th day of July, 2013

O. A. Angote

Judge