



**Gachungu (Suing on Her Own Behalf and as Administratrix of the Estate of George Gathungu Gitu) v Gathungu & 3 others (Environment & Land Case 114 of 2019) [2025] KEELC 3223 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3223 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 114 OF 2019**

**MD MWANGI, J**

**APRIL 4, 2025**

**BETWEEN**

**RUTH NJERI GACHUNGU (SUING ON HER OWN BEHALF AND AS ADMINISTRATRIX OF THE ESTATE OF GEORGE GATHUNGU GITU) ..... PLAINTIFF**

**AND**

**ELIZABETH NJUHI GATHUNGU ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE JOSEPH KANGETHE ..... 2<sup>ND</sup> DEFENDANT**

**ELLAH KARWITHA KANGETHE ..... 3<sup>RD</sup> DEFENDANT**

**KAJIADO DISTRICT LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

*(In respect of the 1st, 2nd and 3rd Defendants' Notice of Motion dated 22nd November, 2024 brought under Sections 1A and 1B of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules)*

**RULING**

**Background**

1. The Application under consideration which is the subject of this Ruling is the Notice of Motion dated 22<sup>nd</sup> November, 2024 by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein. The Application essentially seeks for the following prayers;
  - a. That this honorable court be pleased to grant leave to the 1<sup>st</sup> Defendant to file additional (list of) witnesses and their corresponding witness statements.



- b. That upon the grant of the foregoing order, this honorable court be pleased to deem the amended list of witnesses and the new witnesses' statements as duly filed.
- c. Costs in the cause.
2. The Application is premised on grounds that the new witnesses' testimonies are pertinent to the just determination of this case. It is therefore in the interest of justice that the application be allowed. Further that no prejudice will be suffered howsoever by the Plaintiff.
3. The Application is supported by the Affidavit of Daniel Nuthu, sworn on 22<sup>nd</sup> November, 2024 who restates the grounds of the face of the application. He deposes that given the stated witnesses are the 1<sup>st</sup> Defendant neighbor's, their testimonies shall assist this court to establish true account of the dispute herein.
4. The Advocate avers that the Application was made without unreasonable delay upon discovery of the availability of the witnesses. He affirms that the Plaintiff will not be prejudiced in any way if the leave sought is granted.

### **Response by the Plaintiff**

5. The Plaintiff responded to the application by way of a Replying Affidavit by Ruth Njeri Gathungu sworn on 3<sup>rd</sup> December, 2024 who avers that the application by the Defendants is frivolous, an afterthought, and was made in sheer bad faith and therefore must not be entertained. She avers that on 3<sup>rd</sup> December, 2024 at 12.30 PM, Mr. Harrison Kinyanjui Advocate notified her that the 1-3<sup>rd</sup> Defendants had lodged an application seeking to call additional unnamed witnesses. However, the served application never had a hearing date neither was it lodged under certificate of urgency or certified urgent by the court.
6. It is the plaintiffs' opinion that the application seeks to prolong the suit and create an impression that the Defendants have an expanded case which they ostensibly seek to execute before this court which in reality they do not have. This is because the evidence of alleged witnesses has not been tendered.
7. The plaintiff asserts that she was gravely distressed upon arranging for trial only for the Defendants to scuttle the set hearing date by filing the instant application yet they ought to have moved the court earlier. The plaintiff further avers that she expended funds to secure attendance of her witnesses, mainly the Forensic expert, SSP Emmanuel Kenga and Chief Inspector Alex Mwongera,
8. Finally, in opposition the Application, the plaintiff alleges that the 1-3<sup>rd</sup> Defendants were fully aware that on 4<sup>th</sup> December, 2024 the suit was set for trial and not prosecution of the 1-3<sup>rd</sup> Defendants belated motion.

### **Directions**

9. On 28<sup>th</sup> January, 2025, the court directed that the application be canvassed by way of written submissions. Counsel for the Plaintiff as well as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants duly complied and filed their respective submissions' which I had the benefit of reading in writing this ruling.

### **Determination**

10. Upon careful analysis of the Notice of Motion and the affidavit in support by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, Plaintiff's response as well as the parties detailed submissions, the singular issue for determination is whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants should be granted leave to file additional list of witnesses and their corresponding statements.



11. Order 7 Rule 5(b) and (c) of the Civil Procedure Rules provides that a defence and counterclaim must be accompanied by a list of witnesses to be called at the trial and witness statements signed by the witnesses. The Rules further provide that a party may with leave of the court furnish witness statements at least 15 days prior to the trial conference.
12. The wording of the above provisions implies that parties are permitted to file additional documents and witnesses' statements on condition they seek leave of the court. In *Too v Tum* (Environment & Land Case 975 of 2012) [2014] KEELC 512 (KLR) (27 January 2014) (Ruling), Munyao J pronounced himself as follows with regard to this issue;

“This however is not to say, that the Court can never under any circumstances, permit a party to adduce additional evidence, that was not furnished to the other party as provided under the rules. ....Where such evidence can be adduced, without causing undue prejudice to the other party, the Court ought to allow the application, so as to allow such party, the opportunity to present his case in full. The Court may consider various factors including, but not restricted to, the earlier availability of the witness, the discovery of a new document, and the stage of the proceedings at which the additional evidence is sought to be introduced.”
13. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants contention is that participation of the proposed additional witnesses in this matter shall assist the court in establishing the true account of the dispute. This because they have material information which is relevant for the just determination of this suit.
14. Section 1A of the *Civil Procedure Act* CAP 21 obligates parties and advocates in civil proceedings to assist courts to further the overriding objective of the Act through participation in court processes and complying with courts directions. These provisions are further reiterated in Section 3(3) of the *Environment and Land Court Act* which provides as follows;

“The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.”
15. Additionally courts in exercising their judicial authority are obligated to ensure that justice is administered without undue regard to technicalities as in accordance with Article 159(2)(d) of *the Constitution*.
16. In this case, considering that the hearing of the matter has not taken off, no prejudice will be suffered by the Plaintiff. To enable the just and conclusive determination of this dispute, I allow 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Notice of Motion dated 22<sup>nd</sup> November, 2024. I grant them leave to file and serve the additional list of witnesses accompanied by the witness statements of all the witnesses in the next 14 days from the date of this ruling with corresponding leave to the Plaintiff and the 4<sup>th</sup> Defendant to file and serve any additional witness statements, if they so wish, within 14 days after service of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants' additional list of witnesses and witness statements.
17. The costs of this application shall be in the cause.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4<sup>TH</sup> DAY OF APRIL 2025.**

**M.D. MWANGI**

**JUDGE**



In the virtual presence of:

Mr. Harrison Kinyanjui for the Plaintiff/Respondent

N/A for the Defendants/Applicants

Court Assistant: Mpoye

