



Kenya Pipeline Company Limited v Judiciary of Kenya & 2 others (Environment & Land Case 264 of 2019) [2022] KEELC 12757 (KLR) (29 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12757 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 264 OF 2019
EK WABWOTO, J
SEPTEMBER 29, 2022**

BETWEEN

KENYA PIPELINE COMPANY LIMITED APPLICANT

AND

JUDICIARY OF KENYA 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The application for determination was filed vide notice of motion dated May 30, 2022 and accompanied by supporting affidavit sworn by Elizabeth Rop. The plaintiff sought the following orders:
 - i. This court be pleased to grant leave to the plaintiff to file and serve a supplementary list of documents
 - ii. This honourable court be pleased to order the plaintiff's case be re-opened for purposes of adducing additional documentary evidence
 - iii. This honourable court be pleased to recall the plaintiff witness for further examination in chief, for further cross examination and re-examination respectively for the purposes of adducing additional documentary evidence in support of their case
 - iv. The plaintiff shall bear the costs of this application.



2. The suit came up for hearing on March 2, 2022 where the plaintiff testified and closed their case. On June 2, 2022, the suit came up for hearing of the defendant's case where the plaintiff informed the court of the existing application.
3. In submissions dated July 18, 2022, the plaintiff submitted that the primary consideration is whether it would be in the interests of justice to allow the said prayers. Relying on the cases of *Odoyo Osodo v Rael Obara Ojuok & 4 others* (2017) eKLR and *Victoria Naiyanoi Kiminta v Gladys Kiminta Prinsloo* [2019], it was further asserted that they could not have attained the said evidence in good time and moreover the documents would have a great impact on the result of the case.
4. The application was served upon the defendants on May 30, 2022 as evidenced by an affidavit of service dated May 31, 2022 and sworn by Eliphaz Mutea Kiogora. Being unopposed by the defendants the court moved to set a ruling date for September 29, 2022.
5. Having perused the written submissions and court proceedings it is evident that the issue for determination before this court is;
 - i. Whether the plaintiff has proven sufficient grounds to re-open their case for purposes of adducing additional?
6. Order 18, rule 1 of the *Civil Procedure Rules*, dictates that the plaintiff shall have the right to begin unless the court otherwise orders. In this case, the plaintiff's witness gave evidence, was cross-examined and re-examined accordingly. Additionally, order 18, rule 10, outlines the circumstances under which a witness may be recalled:

“The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force; put such questions to him as the court thinks fit.”
7. This court must consider the balance of fairness for all parties as outlined in section 146 (4) of the *Evidence Act*:

“The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.”
8. In *Halsbury's Laws of England* Volume 13 on discovery, it is stated that:

“The function of the discovery of documents is to provide the parties with relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to sit before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.”
9. I align myself with the sentiments of the learned judge, in *Pinnacle Projects Limited V Presbyterian Church of East Africa, Ngong Parish & Another* (2019) eKLR

“...There is no greater duty for the court than to deliver substantive justice as provided for under article 159 2(d) at the end of it all. While the wording of article 50 of the *Constitution*



on the right to a fair hearing prima facie seems to focus on criminal trials it's not lost that fair trial in civil cases includes: the right of access to a court, the right to be heard by a competent, independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence..."

10. The Court of Appeal in *Standard Chartered Financial Services Limited & 2 others v Manchester Outfitters (Suiting Division) Limited (Now Known as King Woollen Mills Limited & 2 others)* [2016] eKLR highlights the discretionary powers of the court in determining to re-open a case.
11. This court recognizes that the application was filed before the defendants' hearing and therefore believe that the defendants would not be prejudiced in the event of re-opening the plaintiff's case. I further note that by praying to bear the costs of the application, the plaintiff has upheld the maxims of equity and come with clean hands.
12. In the foregoing, the court finds that the application dated May 30, 2022 is merited and hereby makes the following disposal orders:
 - a. The plaintiff is hereby granted leave to file and serve a supplementary list of documents within 7 days of delivery of this ruling.
 - b. The plaintiff's case is hereby re-opened strictly for the purposes of adducing additional documentary evidence.
 - c. The plaintiff is granted leave to recall their witness for further examination in chief, for further cross examination and re-examination respectively for the purposes of adducing additional documentary evidence in support of their case
 - d. There will be no orders as to costs.
13. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Eddie Omodi for the Plaintiff/Applicant.

N/A for the 1st, 2nd sand 3rd Defendants/ Respondents

Court Assistant; Caroline Nafuna and Philomena Mwangi.

E. K. WABWOTO

JUDGE

