



**Ng'etich & another (Suing as representatives of the Estate of Kimwetich Chepkam
Moi) v District Land Registrar Nakuru & 3 others (Environment & Land
Case E18 of 2020) [2022] KEELC 13575 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13575 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E18 OF 2020
FM NJOROGE, J
OCTOBER 12, 2022**

BETWEEN

**JEREMIAH NG'ETICH 1ST PLAINTIFF
HARUN NG'ETICH 2ND PLAINTIFF
SUING AS REPRESENTATIVES OF THE ESTATE OF KIMWETICH CHEPKAM
MOI**

AND

**DISTRICT LAND REGISTRAR NAKURU 1ST DEFENDANT
DISTRICT LAND SURVEYORS 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT
DANIEL M MUTEMI 4TH DEFENDANT**

RULING

1. This is a ruling with respect to the Objection raised by the plaintiff's counsel regarding a question that counsel for the defendants asked Jeremiah Kipkemoi Ngetich who testified as PW1.
2. The question objected to was whether there are other people on the lower side of the road and whether they should not have been joined to the suit.
3. Counsel for the plaintiffs argued that the question had some connotation that some parties have not been enjoined and that the suit is incompetent for non-joinder which was a question of law.
4. He relied on the case of *Wangari Maathai vs Kenya Times* (citation not given) and stated that therein the court said that private individuals have no interest equal to standing in claims relating to public property. Counsel for the plaintiffs further submitted that the question was improper and reiterated



that it is a question of law to be dealt with during legal submissions and concluded that the witness is not a lawyer to know about joinder issues.

5. In response to the objection, counsel for the defendants submitted that the witness is not a lawyer but a litigant and that during cross-examination, she is entitled to ask questions to verify the truth without limits. She also submitted that she understands that the road in question in this suit is a public road that was opened and closed but which is now in use.
6. Counsel for the defendants also submitted that the decision in this matter will affect the local people and that it is in the interest of justice that PW1 answers that question.
7. In response, counsel for the plaintiffs submitted that the proceedings of January 21, 2021 and November 30, 2020 are relevant since this is when interim orders were granted.
8. Counsel for the defendants, in response submitted that even the Plaintiff admitted that people had complained and asked whether the decision of the court would affect those people who had complained. She concluded her submissions by stating that it is in the interest of justice that the witness answers the question.

Analysis and Determination

9. The only issue for determination is whether the PW1 should answer the question put to him by counsel for the defendants which is whether there are other people on the lower side of the road and whether they should have been joined in the suit.
10. Counsel for the plaintiffs relied on the case of *Wangari Maathai vs Kenya Times* [1989] eKLR where the court dismissed the plaintiff's suit for lack of locus standi. It is worth noting that the said case affects public interest litigation and the law has evolved since then as Article 22 of the *Constitution* of Kenya provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom has been violated. It is this court's view that the said authority as relied on by counsel for the plaintiffs is not relevant in this instance.
11. The plaintiffs also sought to rely on the proceedings of November 30, 2020 and January 21, 2021. On November 30, 2020, the court issued a temporary injunction restraining the defendants from trespassing on the suit property pending the hearing and determination of the plaintiff's application dated November 12, 2020. On January 21, 2021 the court issued an injunction restraining the defendants from trespassing, surveying or creating an access road on the parcels of land pending the hearing and determination of the suit.
12. It is further this court's view that counsel for the plaintiffs did not create a nexus between the proceedings of the aforementioned dates and his objection to PW1 answering the question of whether there are other people on the lower side of the road and if they should be joined in the suit.
13. The court in the case of *Law Society of Kenya v Faith Waigwa & 8 others* [2015] eKLR stated as follows on the reasoning behind cross examination of witnesses:
 9. Let me once more restate the rationale of cross-examination of witnesses. First, it is a mechanism which is used to bring out desirable facts to modify or clarify or to establish the cross-examiner's case. In other words, cross-examination is meant to extract the qualifying facts or circumstances left out by a witness in a testimony given in examination-in-chief. Secondly, the exercise of cross-examination is intended to impeach the credit worthiness of a witness. In cross-examination a witness may be asked questions tending for example to expose the



errors, contradictions, omissions and improbabilities. In the process, the veracity of a witness's averments is tested.

14. As was held in the above mentioned case, part of the rationale of cross-examination is to bring out facts and/or establish the cross examiner's case and it is therefore my opinion that in the circumstances of this case, the plaintiffs have not laid a proper basis for their objection and the objection is hereby overruled. The witness shall answer the question.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 12TH DAY OF OCTOBER, 2022.

A photograph of a handwritten signature in blue ink on a light-colored surface. The signature is cursive and appears to read 'Mwangi Njoro'.

**MWANGI NJOROGE
JUDGE, ELC, NAKURU**

