



**Wambaa v Nairobi City Council & another (Environment & Land Case 645 of 1998) [2022] KEELC 13409 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13409 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 645 OF 1998  
JE OMANGE, J  
OCTOBER 12, 2022**

**BETWEEN**

**ANN MUTHONI WAMBAA ..... PLAINTIFF**

**AND**

**NAIROBI CITY COUNCIL ..... 1<sup>ST</sup> DEFENDANT**

**MICHAEL K MAINA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The matter was coming up for hearing on October 5, 2022. Counsel for the first defendant Ms Munda, sought to close the first defendants case on the basis that all efforts to secure the attendance of the 1<sup>st</sup> defendant in court had failed. All correspondence to the first defendant had gone unanswered.
2. Senior counsel Mr Ngatia objected to the application to close the 1<sup>st</sup> defendants case without calling a witness. It was his contention that the 1<sup>st</sup> defendant's testimony is crucial to the determination of this matter as the actions of the 1<sup>st</sup> defendant were at the heart of the dispute between the plaintiff and the 2<sup>nd</sup> defendant.
3. Counsel further submitted that the court ought to compel the witness to attend court by issuing a warrant to secure his attendance.
4. Senior counsel brought to the attention of the court ELC Case no 394 of 2017 in which Hon Justice Angote J stated "It is not in dispute that Francis Mburu signed the witness statement in support of the plaintiffs case on October 16, 2019. Having voluntarily signed the said statement, the said Francis Mburu must attend court and give his evidence, which evidence will be tested by the defendants in cross- examination. in the event he fails to attend court on a date to be fixed by this court, the plaintiffs advocate will be at liberty to make an oral application for the issuance of warrants of arrest. "



5. Having considered the submissions by counsel it is evident that the 1<sup>st</sup> defendant has material evidence to give in this matter.
6. There is no contention that the court has power to compel a witness to attend court.
7. The only issue this court must determine is whether the court can compel a witness who is a party and who has chosen not to attend court to testify.
8. The first defendant has chosen not to adduce evidence in support of its case and counsel for the 1<sup>st</sup> defendant has opted to close its case. The court cannot compel the 1<sup>st</sup> defendant to testify in support of its case. The court can only use its power to compel in respect of a party which seeks the assistance of the court. Indeed, this was the finding in the quoted case in which the plaintiff was seeking assistance of the court to secure attendance of his own witness.
9. As such while this court cannot compel attendance of the 1<sup>st</sup> defendant's witness when the 1<sup>st</sup> defendant has indicated they wish to close their case, the 2<sup>nd</sup> defendant is at liberty while prosecuting his case to seek the assistance of the court in securing all witnesses necessary for the court to reach a fair determination of the matter.
10. In view of the foregoing the 1<sup>st</sup> defendant is allowed to close its case. A hearing date to be issued for the 2<sup>nd</sup> defendant's case.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF OCTOBER, 2022.**

**JUDY OMANGE**

**JUDGE**

In the presence of: -

.....for the Applicant

.....for the Respondent

.....Court Assistant

