



**Kibuna v City Council of Nairobi & 4 others (Environment and Land Case
Civil Suit 529 of 2018) [2022] KEELC 13445 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13445 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 529 OF 2018**

**LN MBUGUA, J
OCTOBER 6, 2022**

BETWEEN

JEDIDAH NGINA KIBUNA PLAINTIFF

AND

CITY COUNCIL OF NAIROBI 1ST DEFENDANT

ABRAHAM MWANGI NJIHIA 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

MORRIS GITONGA NJUE 4TH DEFENDANT

VERA MWASI 5TH DEFENDANT

RULING

1. This ruling is in respect of the applications made by counsel for the 1st defendant who has objected to the cross examination of PW1 by counsel for 2nd defendant in relation to the witness statement of 1st defendant sworn by one Abwao Erick. It is averred that that statement was substituted through an application allowed by this court on 22.7.2021.
2. In rejoinder, counsel for 2nd defendant avers that despite the substitution, that witness statement of 1st defendant was never expunged and is still on record, that cross examination is wide and that in the interest of justice, PW1 should be cross examined.
3. In the case of *Law Society of Kenya v. Faith Waigwa & 8 others* [2018] eKLR the court stated that;
“The rationale of cross-examination of a witness; first it is a mechanism which is used to bring out desirable facts or modify or clarify or establish the cross examiner’s case. In other words,



cross – examination is meant to extract the qualifying facts of circumstances left out by a witness in a testimony given in examination in chief...”

4. In the instant case the counsel for 2nd defendant has embarked on cross – examination of PW1 in relation to a witness statement of 1st defendant which statement shall not be relied on by 1st defendant during the trial, as the same was substituted. I find that much as a cross examiner has great latitude at the stage of cross examination, undertaking the exercise of cross examination based on a witness statement which shall not be relied upon will be prejudicial to the case of 1st defendant, in that the opportunity to make any clarifications there of shall be limited or none existent.
5. I therefore uphold the objection and hence the witness (PW1) shall not be cross examined on content captured in the previous statement of 1st defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Desmond Maina for the Plaintiff

Katila for the 1st Defendant

Ondabu for the 2nd Defendant

Fatma for the 3rd Defendant

Nyaga for the 4th & 5th Defendant

Court assistant: Joan

