



Ethics and Anti-Corruption Commission v Baiya & 3 others (Environment & Land Case 256 of 2018) [2022] KEELC 14757 (KLR) (14 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14757 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 256 OF 2018
FM NJOROGE, J
NOVEMBER 14, 2022**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

JACOB BAIYA & 3 OTHERS DEFENDANT

RULING

1. Ms. Maina has stated that she requires more time to examine the counterclaim filed by the 2nd defendant which she was not aware of before today. The other counsel were ready to proceed. All except Mr. Chepkwony have been served with the counterclaim.
2. This is a strange situation where the counterclaim was obfuscated beneath a foliage of documents that are attached to a replying affidavit, which are also bound together. It was quite an exercise for the court to trace and find the counterclaim of the 2nd defendant this morning when Mr. Mongeri stated that a counterclaim had been filed on his behalf.
3. It is therefore no surprise that Ms. Maina appeared unaware of that counterclaim to date. The question that arises now is: should this court order the hearing to proceed or not in the light of the disclosure that the plaintiff was not aware of existence of the counterclaim and has not responded to it at all?
4. It is true that a counterclaim is a separate suit by itself and proceeding in the current circumstance where the plaintiff has conceded to not ever having seen the counterclaim may be prejudicial to the plaintiff. I have already stated that the defence and counterclaim were not presented to the court in the conventional manner and though Mr. Matiri avers the copy served upon him is court-stamped, the copy in the court file is not.
5. I take note that the plaintiff has called 3 witnesses and had a 4th witness ready to testify today. However, 2 more witnesses are yet to testify and it can be seen that the plaintiff's case is far from closure.



6. Consequently, instead of having the present witness testify, and not knowing the future of this litigation if the court grants an adjournment to Ms. Maina for the purpose sought, and in particular whether there will be any need to recall any witnesses who have already testified.
7. I find that it would not be prudent application of valuable judicial time to have PW4, who had been sworn and was in the stand, testify. Consequently, I adjourn the present hearing and I order that Ms. Maina shall report to this court within 7 days concerning her client's position regarding the counterclaim. This hearing is therefore adjourned. There will be a virtual mention by way of Microsoft Teams on November 22, 2022 for further directions.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 14TH DAY OF NOVEMBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

