



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CIVIL SUIT NO. 463 OF 1998**

**HON. SAJJAD RASHID.....PLAINTIFF**

**=V E R S U S=**

**NATION NEWSPAPERS LTD.....DEFENDANT**

**R U L I N G**

The Plaintiff called his first witness, the Plaintiff, in examination-in-chief. The Defendant counsel cross-examined him and he was re-examined by his counsel and was discharged. The Plaintiff called other witnesses and in the course of hearing of Plaintiffs witnesses the Defendant counsel applied for the recalling the Plaintiff for further cross-examination by himself under the provisions of Section 146(4) of Evidence Act, Cap.80 which provides:-

*“140.(4) The court may in all cases permit a witness to be re-called either for further examination -in-chief or for further cross -examination, and if it does so parties have the right of further cross -examination and re -examination respectively.”*

In addition to this express power given to the court the manner of the conduct of the hearing and taking evidence is also set out in Civil Procedure Rules, Order 17 of Cap.21, rule 12 which states:-

*“12. The court may at any stage of the suit re -call 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.”*

It is to be observed that the Civil Procedure Act does not deal with the manner in which court is to take evidence of witnesses. Section 22 of the Act simply states that the court .....

*“on the application of any party may issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid.”*

The Applicant herein seeks the re-call of the Plaintiff for purpose of recross- examination on the ground that when the Plaintiff gave evidence in the year 2001 (25/10/01) the Akiwumi Report had not been released for use by members of public. That after the public release of the report there has arisen need to cross-examine the Plaintiff on matters disclosed in the Report which touch on this Plaintiff’s case and that there was failure to disclose certain facts which make his evidence look like perjury.

The Plaintiff is claiming damages for libel and all evidence which tends to show that the Defendant was justified or affecting the character of the Plaintiff in material

It has been submitted by the Plaintiff counsel that the Plaintiff is not a witness. It is correct that the Plaintiff may not give evidence in his case himself but may call his witnesses in support thereof. However, once the Plaintiff has taken to the witness box he is a witness and all rules regarding witnesses apply to him.

It is my finding therefore that there are matters which have come to the Defendant’s knowledge after the Plaintiff as a witness was discharged and the Defendant is entitled to re-cross-examine him. The right for reexamination is granted to the Plaintiff Advocate.

The Plaintiff's case is not yet closed. In my view Order 17 Civil Procedure Code rule 12 has to be read together with Section 146(4) Evidence Act, Cap.80.

The Statute governs the subsidiary registration and therefore I am of the view that the right of court to re-call a witness is not limited as it appears under Order 17 rule 12 but is wide as given under Section 146(4) of Evidence Act.

Consequently, I allow the application with costs.

Dated at Mombasa this 1st day of March, 2004.

JOYCE KHAMINWA

J U D G E