



REPUBLIC OF KENYA



**Kosgey & another v Kosgey & 3 others (Environment & Land Case E022 of 2023) [2025] KEELC 477 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 477 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E022 OF 2023  
GMA ONGONDO, J  
FEBRUARY 5, 2025**

**BETWEEN**

**WILLIAM KIPCHUMBA KOSGEY ..... 1<sup>ST</sup> PLAINTIFF**

**WILSON KIPKEMBOI KOSGEY ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PETER KIPCHIRCHIR KOSGEY ..... 1<sup>ST</sup> DEFENDANT**

**ALBINA GICHUKU KOSGEY ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR NANDI COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The present ruling originates from an application by Mr Francis Murgor learned counsel for the plaintiffs to call the 3<sup>rd</sup> defendant to produce documents specified in the notice to produce documents dated 25<sup>th</sup> April 2024 under, inter alia, section 22 (a) and (b) of the *Civil Procedure Act* Chapter 21 Laws of Kenya.
2. Mr Murgor has premised the application on the grounds that;
  - a. The notice to produce documents was duly served on all the defendants.
  - b. Summons not served on the 3<sup>rd</sup> defendant to produce documents to be relied upon by the plaintiffs.
  - c. The 3<sup>rd</sup> defendant will be a common witness herein.
  - d. Hearing of the plaintiffs' case proceed today
  - e. The plaintiffs' case be closed tomorrow after the testimony of the 3<sup>rd</sup> defendant.



3. Mr Simiyu learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants has objected to the application and urged that the plaintiffs' case be closed on the grounds thus;
  - a. Hearing of the suit had been adjourned previously at the instance of the plaintiffs' counsel who was condemned to pay costs.
  - b. The plaintiffs' counsel did not take action to procure attendance of the 3<sup>rd</sup> defendant to testify.
4. Mr Kwame learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> defendants associated himself with the objection raised by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants. He stated in part-
  - a. That he intends to call the 3<sup>rd</sup> defendant for further hearing tomorrow and
  - b. The plaintiffs' counsel will be at liberty to cross examine the 3<sup>rd</sup> defendant on the documents contained in the notice duly served herein.
5. By his rejoinder, learned counsel for the plaintiffs reiterated that the 3<sup>rd</sup> defendant who is a common witness is duty bound to produce public documents as per the notice issued and served under Order 11 Rule 3 (2) (b) of the Civil Procedure Rules 2010, section 22 (a) (supra), access to information and the Constitutional provisions. Counsel stated that the case had been adjourned previously as the 1<sup>st</sup> and 2<sup>nd</sup> defendants counsel sought to introduce amended defence and counterclaim. That today's date was taken by a counsel who held his brief
6. So, is the application meritorious?
7. It is not in dispute that the notice to produce documents was served on the 3<sup>rd</sup> defendant to give evidence thereof.
8. Further, it is common ground that the suit is listed for hearing today and tomorrow in the spirit of Article 159 (2) (b) of *the Constitution* of Kenya 2010 which reads;  
Justice shall not be delayed
9. Today, the court has substantially heard the plaintiffs' case.
10. Notably, public documents are listed in the notice to produce documents served on the 3<sup>rd</sup> defendant, a public officer.
11. In the spirit of Articles 50 (1), 25 (c). 48 and 159 (2) (b) of *the Constitution* of Kenya 2010, the applicants have the fundamental right to call the 3<sup>rd</sup> defendant pursuant to the notice to produce documents duly served herein; see James Kanyiita Nderitu and another-vs-Marios Philotas Ghikas and another (2016) eKLR.
12. In the premises, the application is merited and the same is hereby allowed accordingly.
13. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 5<sup>TH</sup> DAY OF FEBRUARY 2025**

**HON. G .M .A ONGONDO**

**JUDGE**

Present;

Mr F. Murgor learned counsel for the plaintiffs

Mr Simiyu learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants



Mr Kwame learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> defendants

Walter, court assistant

