



**Njeru ((Suing as the administrator of the Estate of Samuel Njeru M'Uthi
- Deceased)) v Chepkonga & 2 others (Environment and Land Case
167 of 2015) [2025] KEELC 5981 (KLR) (4 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 5981 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 167 OF 2015
CG MBOGO, J
SEPTEMBER 4, 2025**

BETWEEN

**FRANCIS NYAGA NJERU PLAINTIFF
(SUING AS THE ADMINISTRATOR OF THE ESTATE OF SAMUEL NJERU
M'UTHI - DECEASED)**

AND

**IMMACULATE CHEPTUM CHEPKONGA 1ST DEFENDANT
NATIONAL LAND COMMISSION 2ND DEFENDANT
CHIEF LAND REGISTRAR 3RD DEFENDANT**

RULING

1. Before this court is the notice of motion dated 4th March, 2025 filed by the 1st defendant/applicant and it is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Sections 3 and 23 of the *Environment and Land Court Act* and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:-
 1. That the honourable court be pleased to set aside the orders issued on 31/05/2023.
 2. That the honourable court be pleased to direct that hearing of this matter be conducted through hybrid hearing.
 3. That costs of this application be provided for by the plaintiff.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of the 1st defendant/applicant sworn on even date. The 1st defendant/applicant deposed that the plaintiff's counsel Mr. Osundwa made an oral application in court on 31st May, 2023 that the 1st defendant/



- applicant attends the court physically when the matter came up for hearing. She deposed that the learned counsel sought to question the identity card used during the transfer of the suit property.
3. The 1st defendant/applicant deposed that there are challenges of getting commercial flights from her duty station, a fact which was communicated to the court and the other parties on 30th September, 2024. Further, that the plaintiff's counsel objected to the proposal vide the letter dated 1st October, 2024 while the matter had been set down for hearing which led to the adjournment of the same. She deposed that she struggled to get a flight and when she managed to do so as to attend the hearing, the matter did not proceed for hearing as the learned counsel for the plaintiff was unwell.
 4. She deposed that she was inconvenienced with the adjournment, and she believes that the plaintiff/applicant's insistence on physical court attendance has been made in bad taste. Further, that she has previously testified virtually in a hearing on one of the properties that was exchanged with the suit property, and that it is not fair to insist on physical attendance. She deposed that it is in the interest of justice that the application be allowed.
 5. The application was opposed vide the replying affidavit of the plaintiff/respondent sworn on 28th March, 2025. The plaintiff/respondent deposed to the previous events leading to the request to have the 1st defendant/applicant testify in person. That as a result of the uncertainty to the identification of not only the 1st defendant but other persons from whom she alleges to have acquired ownership interest in the suit property that he made the application. The plaintiff/respondent further contended that a serious challenge exists as to the 1st defendant's identity and to the authenticity of the documents presented as evidence. That in a highly contentious dispute over the very emotive historical issue of property ownership especially where there is likelihood of fraud, the overriding objective of the court will best be served by in-person hearing.
 6. The plaintiff/respondent deposed that the use of video conference will deny him his day in court, and a face to face confrontation with the 1st defendant/applicant who is his accuser in the counterclaim. He deposed that she has not explained the difficulties to be faced when the sitting of this court can be scheduled in advance to accord parties to prepare for travel arrangements, if necessary. He deposed that if at all the 1st defendant/applicant had difficulties being in Kenya, she would not be expected to be available 3 weeks after the said date of the hearing. Further, that it has not been proved how the 1st defendant/applicant's work schedule is structured to decide whether or not the same is busy as alleged.
 7. The application was canvassed by way of written submissions. The 1st defendant/ applicant filed her written submissions dated 15th July, 2025. While reiterating the averments contained in her application which are anchored on Sections 1B, 1A of the Civil Procedure Act, Sections 3 and 23 (3) of the Environment and Land Court Act, the 1st defendant/applicant submitted that the insistence by counsel that she attends court physically threatens her right to justice guaranteed under Article 48 of the Constitution, and further, he has not demonstrated the prejudice he will suffer if the matter proceeds virtually or through a hybrid system. The 1st defendant/ applicant relied on the cases of *Lochab Bros Limited v Enock Maleya Khisa* (Miscellaneous Application E008 of 2023) [2023] KEELRC 3112 (KLR), *BWK v RW* (Miscellaneous Application 192 of 2019) [2022] KEHC 17222 (KLR), and *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* (Civil Case E527 of 2020) [2021] KEHC 93 (KLR).
 8. The plaintiff/respondent did not file his written submissions. Be that as it may, I have considered the application, the replying affidavit and the written submissions filed by the 1st defendant/applicant. The issue for determination is whether this court ought to set aside the orders requiring the 1st defendant/applicant to appear in person for the hearing of this case.



9. I have perused the record, and I do note that on 31st May, 2023, the learned counsel for the plaintiff/respondent raised the issue of the identity of the 1st defendant/applicant. On 2nd October, 2024, and while adjourning the matter for the last time on this date, the court directed that the defendant to appear physically during the hearing. In requiring her physical attendance in court as well as the other witnesses, the plaintiff/respondent in his replying affidavit, raised issues of fraudulent dealings with concern on the identity of the 1st defendant/applicant.
10. The 1st defendant/applicant contended that it is difficult to get commercial flights from her work station, and that in an almost similar matter, she testified virtually and did not require to attend court physically. The 1st defendant/applicant argued that her identity can always be examined even virtually and she doubted whether indeed the plaintiff/respondent was genuine with his intentions.
11. I have carefully considered the arguments raised by the respective parties, and it is not in doubt that this court directed the physical attendance of the 1st defendant/applicant. Section 23 (3) of the [Environment and Land Court Act](#) provides as follows:-

“Where it is expedient and appropriate to do so, the court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferences or other modes of electronic communication.”
12. Ordinarily during hearing, the evidence tendered by the parties is put to test, and arguments for and against are advanced. It is during this time that the court is afforded an opportunity to have a clear picture of the issues at hand, and at the same time observe the demeanor of witnesses. In this case, the plaintiff/respondent doubts the identity and the authenticity of the 1st defendant/respondent in the transactions that culminated into the filing of the suit. According to him, a physical hearing will enable him establish some truth. A careful reading of Section 23 (3) of the [Environment and Land Court Act](#) Cap 8D gives the court the discretion to decide the manner in which trial will be conducted. Previously, this court directed the defendant to physically attend court. It is also not in doubt that she is stationed out of the country, and perhaps in case of virtual hearing, she will save on costs. While I may agree on the costs to be incurred and the availability to conduct virtual hearings, I would also not wish to downplay the plaintiff's/respondent's concern.
13. In my view, the overriding objective of this court would be served if the 1st defendant/applicant physically attends court for hearing. To ensure that this is done, the parties ought to agree on a date in advance, and taking note that a last adjournment was granted, parties must ensure that the hearing proceeds. In that case, I will not set aside the orders/directions issued on 2nd October, 2024. The 1st defendant/respondent must appear in court physically for the hearing. The notice of motion dated 4th March, 2025 is hereby dismissed. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DAY OF SEPTEMBER, 2025.

HON. MBOGO C.G.

JUDGE

04/09/2025.

In the presence of:

Mr. Benson Agunga - Court assistant



Mr. Tirop holding brief for Mr. Rutto for the Defendant/Applicant

Mr. Shikanda holding brief for Mr. Osundwa for the Plaintiff

