



**International Pentecostal Hollines & 6 others v Star-Land Company Limited & 2 others  
(Environment & Land Case 594 of 2012) [2024] KEELC 6722 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6722 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 594 OF 2012  
EO OBAGA, J  
OCTOBER 15, 2024  
(FORMERLY HCC 23 OF 2010)**

**BETWEEN**

**INTERNATIONAL PENTECOSTAL HOLLINES ..... 1<sup>ST</sup> PLAINTIFF  
CHURCH (SOUL RESTORATION WORSHIP CENTRE SIMON  
NYABERA ..... 2<sup>ND</sup> PLAINTIFF  
EZEKIEL KEARI GIDEON ..... 3<sup>RD</sup> PLAINTIFF  
ISAIH M MOGUTHEARORI ..... 4<sup>TH</sup> PLAINTIFF  
MOSES PETER OKERIO ..... 5<sup>TH</sup> PLAINTIFF  
KENNETH CHESEREK SANG ..... 6<sup>TH</sup> PLAINTIFF  
CHALES MWALIMU OKERIO ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**STAR-LAND COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT  
GREENVILLIE PLANTATIONS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
PANCREAS OYATSI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of motion dated 28.3.2024 in which the plaintiffs/Applicants seek the following orders: -
  - a. Spent
  - b. Spent



- c. That the Honourable court be pleased to grant leave to the 1<sup>st</sup> plaintiff to re-open its case so as to adduce more evidence relating to the introduced Defendant's witness.
  - d. The 1<sup>st</sup> Plaintiff's witness Rev. Daniel Kwatuha be permitted to file the annexed evidence as further plaintiffs list of documents within Three (3) days and allowed to be cross-examined first before the Defendant/Respondent starts its case.
  - e. That costs of the application be provided for.
2. The Applicants contend that the 1<sup>st</sup> Defendant/Respondent has introduced a new witness without leave of the court whose evidence will be prejudicial to the Applicants' case. They further contend that the witness who has been introduced by the 1<sup>st</sup> Respondent had made an application to be joined in these proceedings but his applications was disallowed. It is on this basis that the Applicants pray that the Applicants' draft supplementary list of documents be admitted in evidence and their witness cross-examined before the defence case starts.
  3. The Applicants further contend that while the introduced witness' application for joinder was pending determination, he filed Eldoret Chief Magistrate E&L Case No E003 of 2021 which was withdrawn after the Applicants filed a preliminary objection and that the introduced witness apologized to the Applicants. The Applicants state that should the court allow the introduced witness, they should also be allowed to be heard on their draft supplementary list of documents.
  4. The Applicants' application was opposed through a replying affidavit sworn on 7<sup>th</sup> May, 2024. The 1<sup>st</sup> Respondent contends that the Applicants' application is an abuse of the process of court and is only meant to fill the gaps in their case and to delay the finalization of this case. The 1<sup>st</sup> Respondent states that the Applicants have failed to demonstrate that the evidence which they intend to adduce could not be obtained without reasonable diligence at the time of hearing of the case.
  5. The 1<sup>st</sup> Respondent states that the mere fact that the introduced witness had unsuccessfully made an application to be joined in this case is not a bar to him being called as a witness of the 1<sup>st</sup> Respondent. He further states that the Applicants have not demonstrated in what manner the evidence sought to be introduced will influence the case and that in any case, the Applicants deliberately decided not to introduce the documents now sought to be introduced when they proceeded with their case.
  6. The 1<sup>st</sup> Respondent states that it will be prejudicial to the 1<sup>st</sup> Respondent to have the case re-opened given the fact that this case has been pending for over a decade and that in any case, the Applicants will have a chance to cross-examine the introduced witness.
  7. The parties agreed to dispose of the application by way of written submissions. The Applicants filed their submissions dated 4.6.2024. They submitted that it was necessary for their case to be re-opened so that a witness from the 1<sup>st</sup> Applicant can be cross examined on documents they intend to rely on. The Applicants relied on the case of *State v Hepple*, 279265, 217 (1977) where it was held as follows:-

“The Judge must consider whether the party deliberately withheld the evidence preferred in order to have it presented at such time as to obtain unfair advantage by its impact on the tier of facts.”
  8. The Applicants submitted that it is important that a party discloses the nature of his evidence before he starts his case and that this is better achieved by the parties exchanging witness statements. They relied on a passage from Murphy on Evidence 12<sup>th</sup> Edition paragraph 17.17.



9. The Applicants further relied on the case of *Oakley v Royal Bank of Canada* (2013) ONSC 145 (2013) OJ No 109 SC which held that a trial judge has discretion to permit a plaintiff to re-open its case but that this discretion has to be exercised judicially. It must involve a scrupulous balancing of accountability of counsel for decisions regarding the prosecution of its case and the interest of justice.
10. The 1<sup>st</sup> Respondent filed his submissions dated 17.6.2024. he submitted that the court has to consider why the evidence sought to be introduced was not presented during the hearing. He relied on the case of *Smith v New South Wales* (1992) HCA 36 (1992) 176 CLR 256 where it was stated as follows:-

“If an application is made on the basis that new or additional evidences is available, it will be relevant, at that stage to enquire why the evidence was not called at the hearing. If there was a deliberate decision not to be recorded, ordinarily that will tell decisively against the application....”
11. I have considered the Applicants’ application as well as the opposition to the same by the 1<sup>st</sup> Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicants have made a case for re-opening their case. In general, the principles which govern re-opening of a case is firstly, whether the evidence is relevant to a material issue in the case. Secondly, the potential prejudice to the other party, if reopening is permitted. Thirdly, the effect of reopening on the orderly and expeditious conduct of the trial.
12. The Applicants closed their case on 6/12/2022. I have looked at the documents which the Applicants are intending to use in case the application for reopening of their case is allowed. These documents were readily available and were in their possession. The only reason why they want their case reopened is because the 1<sup>st</sup> Respondent has introduced a witness who had unsuccessfully sought to be joined in these proceedings. They contend that his introduction was without leave of the court and that if the court will allow him to testify then they should be allowed to reopen their case as a pre-condition to allowing him to testify on behalf of the 1<sup>st</sup> Respondent.
13. It is indeed true that the witness who has been introduced by the 1<sup>st</sup> Respondent had made an application to be joined in these proceedings. The application was however dismissed on 7.10.2020. I have read the said ruling. In paragraph 5 (c) of the said ruling, the Judge clearly stated that despite the Applicant in that application not succeeding to be joined, that did not bar any of the parties calling either all or one of them as their witness as long as they recorded witness statement, filed the same and served the other parties in accordance with the law.
14. In the instant case, the introduced witness has recorded a statement, filed the same and served it upon the other parties. The mere fact that he unsuccessfully sought to be joined in this case is no bar to him testifying on behalf of the 1<sup>st</sup> Respondent. The court in the aforementioned ruling was categorical that any of the parties were at liberty to call any of the Applicants in that application as their witnesses. This is exactly what the 1<sup>st</sup> Respondent did in the present case.
15. This case has been in court for 14 years. The Applicants have not demonstrated why they could not present the documents they now wish to rely on during the hearing. Re-opening of the case is meant to counter the evidence of the introduced witness. This will prejudice the 1<sup>st</sup> Defendant and will not be in order for this case which has been pending in court for a long time. I therefore find that the Applicants’ application is devoid of merit. The same is dismissed with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 15<sup>TH</sup> DAY OF OCTOBER, 2024.**



**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Momanyi for 1<sup>st</sup> Defendant/Respondent.

Court Assistant -Laban

**E. O. OBAGA**

**JUDGE**

**15<sup>TH</sup> OCTOBER, 2024**

