



**Bore v Chebet (Environment & Land Case 221 of 2014)  
[2023] KEELC 16261 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16261 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 221 OF 2014  
FM NJOROGE, J  
MARCH 13, 2023**

**BETWEEN**

**KIPROTICH BORE ..... PLAINTIFF**

**AND**

**NANCY CHEBET ..... DEFENDANT**

**RULING**

1. I am requested to allow the plaintiff to be recalled for further cross-examination. The plaintiff testified in this case in the year 2019. Mr Bore opposes Ms Magana’s application on the basis that it appears to be yet another ruse from the defendant’s repertoire, calculated at further delaying the hearing and determination of the present suit.
2. I have considered Ms Magana’s response to the effect that the two witnesses of the defendant are present in court and that the defendant is not seeking an adjournment.
3. I would not have expected that after this long there would be made an application of the kind now under consideration, but now it has been made and it must be dealt with.
4. To begin with, the law provides for a right to apply, and jurisdiction on the part of the court to grant that application if merited, to have a witness recalled either for examination or cross-examination and Ms Magana has correctly cited Section 146 of the *Evidence Act* as the instrument enabling that course of action. The question arising now is: having the circumstances of this case in mind, should the said application be granted? It may be true that any party may make numerous applications and raise various points on the day of the hearing whose effect is to delay the disposal of the suit, but it may not be necessarily due to the desire to delay the case that those applications are made or points raised. In litigation a party whether a plaintiff or a defendant has the right to ask the court to make a determination on any point of law before the hearing or during the process of the hearing and if he does not do so he only would have himself to blame after the hearing is concluded and all doors to



the determination of such application or points of law shut by way of a final judgment before they are raised.

5. I would like to think that the defendant is only trying to exhaust the remedies available to her during the process of hearing of the present suit and I do not have any evidence placed before me to the effect that the application made by Ms Magana is not being made in good faith.
6. Ms Magana's application this has merit. Consequently, I allow the application to have PW1 recalled for further cross-examination. I also order that after cross-examination the plaintiff's counsel shall be entitled to re-examination of PW1.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 13<sup>TH</sup> DAY OF MARCH 2023.**

**MWANGI NJOROGE**

**JUDGE**

