



**Bore v Chebet (Environment & Land Case 221 of 2014)
[2023] KEELC 16260 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16260 (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. Ms Magana and her clients had sufficient time to prepare the plaintiff and his counsel for a session of further cross-examination in this matter. However, they never did raise the possibility that the PW1 would be needed in court for cross-examination in good time and the application for such recalling was made and granted just today which was a date meant for further hearing of the defence case. I consider that a long period has lapsed since PW1 testified yet that evidence that he gave will be used in cross-examining him and he needs to refresh his memory. In saying this, this court is aware that there may be knowledge regarding the suit land which may be relevant and some which may be irrelevant to this case and PW1 may need to re-acquaint himself with what he stated and what is relevant especially now that Mr Bore has submitted that PW1 is now suffering from memory lapses the extent of whose effect of which this court cannot at present decipher.
2. I am persuaded that in these circumstances PW1, having been ready only for the hearing of the defence case, and not having been alerted that he would be further cross-examined, is not ready to be placed in the stand for such cross-examination and asking him to take the stand is akin to an ambush. I therefore approve of Mr Bore’s application, argument and reliance on Article 50 of the Constitution regarding the need for PW1 to prepare adequately for his case.
3. Consequently, I am inclined to grant and I do hereby grant Mr Bore’s application for adjournment. This hearing is now adjourned to April 13, 2023 at 2:30pm when PW1 shall appear in court for further cross-examination and, if necessary, re-examination.



4. On that day the defence shall also have its witnesses on the standby, ready to proceed with the defence case to conclusion after the cross-examination and re-examination of PW1.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 13TH DAY OF MARCH 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

