



REPUBLIC OF KENYA



Wanjala & 12 others v Musioma & others (Environment & Land Case 300 of 2004) [2023] KEELC 20674 (KLR) (9 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20674 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 300 OF 2004
LN MBUGUA, J
OCTOBER 9, 2023**

BETWEEN

NEWTON WANJALA & 12 OTHERS PLAINTIFF

AND

JOSEPH ZIRO MUSIOMA & OTHERS DEFENDANT

RULING

1. This ruling relates to the objection raised by counsel for 1st and 2nd defendants that the witness on the dock (PW1) is referring to issues beyond what is contained in his statement. In particular, that the witness is stating that the demolition occurred, then they were served with the order.
2. Counsel for the plaintiff avers that the witness needs to clarify that issue.
3. The ELC Practice Directions in the Gazette Notice No. 5178 of 25.7.2014 contain comprehensive directions relating to Pre trial directions. In the case of *Virginia Kathambi Maingi v Nicholas Mwatika & 2 Others* [2021] eKLR, the court had this to say in regard to Pretrial Directions,

“Direction No. 28 (9) act like a reflux valve to facilitate progress and avoid stagnation in resolution of disputes....”.
4. This means that, parties are expected to avail their evidence upfront and not conduct trial by ambush. And to this end, parties are expected to avail comprehensive witness statements well in advance of the trial date.
5. It is noted that even after the witness adopted his witness statement, he is going on to introduce new issues. A case in point is the explanation that demolition occurred before they were served with any court order, yet at paragraph 18 of his statement, the witness states that Joseph Musioma went to court and was given a demolition order. The issue as to when that order was served is not captured.



6. Guided by the provisions of Section 1A and 1B of the *Civil Procedure Act*, the court finds that the overriding objective set out there in shall not be achieved if there is trial by ambush. To this end, the application made by counsel for the 1st – 2nd defendants is upheld. The witness shall not refer to any issues outside what is stated in his statement unless it is geared towards cross referencing his documents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ndiso and Gichuhi for Plaintiff

Mwangi and Angwenyi for 1st & 2nd Defendants

Macharia for 3rd Defendant

Kipchirchir for 4th Defendant

Osoro for the 11th Interested Party (in main suit) and 14th and 15th Defendants in the Counter Claim

Kasim Felix Wekeso 2nd plaintiff

1st and 2nd Defendants

Plaintiffs

Patrick Kairu for 3rd Defendant

John Masesa for 4th Defendant

Mathew Mbaluka Mutiso 11th Interested Party (also 14th and 15th Defendant in Counter Claim

