



REPUBLIC OF KENYA



**Muthithi Investments Limited v Kioko (Environment & Land
Petition 1 of 2019) [2022] KEELC 2901 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 1 OF 2019**

LN MBUGUA, J

JULY 7, 2022

BETWEEN

MUTHITHI INVESTMENTS LIMITED PETITIONER

AND

GIDEON MBUVI KIOKO RESPONDENT

RULING

1. The manner in which this petition shall be heard forms the bone of contention. Affidavit evidence or oral evidence? The petitioners desire that the suit be heard by way of Affidavit evidence with a rider that they be allowed to cross examine the Respondent in line with the directions given by the court on 26th May 2021. The Respondents desire that oral evidence be adduced.
2. Rule 20 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 stipulates that;
 - (1) “ The hearing of the petition shall, unless the Court otherwise (directs, be by way of —
 - (a) Affidavits; or
 - (b) Written submissions; or
 - (c) Oral evidence.
 - (2) The Court may limit the time for oral submissions by the parties.
 - (3) The Court may upon application or on its own motion direct that the petition or part thereof be heard by oral evidence.
 - (4) The Court may on its own motion, examine any witness or call and examine or recall any witness if the Court is of the opinion that the evidence is likely to assist the court to arrive at a decision”.



3. The right to be heard is sacrosanct as embodied in Article 50 (1) of the Constitution which stipulates that;

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

4. In the case of Kenya Trypanosomiasis Research Institute v Anthony Kabimba Gusinjilu [2019] eKLR, it was stated that;

“The right to be heard is a cardinal rule established under the principles of natural justice generally expressed as audi alteram partem. This Latin phrase literally translates 'hear the parties in turn' and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means that a party, no matter how seemingly frivolous or inconsequential, must be given a fair hearing...”

5. The attendance of the Respondent for cross examination was granted by this court *ex parte* on 26.5.2021, but there was no specific order barring the Respondent from getting similar facilitation. The Petitioners have not indicated what prejudice they will stand to suffer if oral evidence is adduced. After all, during an oral hearing, a witness can simply adopt his or her affidavits as their evidence then offer themselves for cross examination.

6. Thus unless the Petitioner is not willing to be cross examined, I see no fuss in having oral evidence in the trial. “What is good for the goose is good for the gander.” Therefore, in order to have orderly proceedings where each party is given an opportunity to articulate their case and cross examine the opponent, I direct that the petition be heard by way of *viva voce* evidence.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ouma for the Petitioner

H.Kinyanjui for the Respondents

Court Assistant: Eddel

