



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC SUIT NO. 99 OF 2016**

**GRACE AKINYI NGOGE.....PLAINTIFF**

**JOHN ABUYA ISANDA.....1<sup>ST</sup> DEFENDANT**

**MARY NJOKI FUNDI.....2<sup>ND</sup> DEFENDANT**

**( AS CONSOLIDATED WITH ELC 6 OF 2016)**

**JOHN ABUYA ISANDA.....1<sup>ST</sup> PLAINTIFF**

**MARY NJOKI FUNDI.....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**NAIROBI CITY COUNTY.....DEFENDANT**

**RULING**

1. On 8<sup>th</sup> October 2020 when this case came up for further hearing, counsel for the 3<sup>rd</sup> Defendant in ELC 6 of 2016 Mr Achoki who had taken over from the Defendant's previous lawyer applied for recalling of the Plaintiff for further cross examination and admission of documents which he had already filed. Mr Achoki submitted that he had written to the advocates herein intimating his intention to have the Plaintiff recalled for further cross-examination.

2. Mr Otieno for the Plaintiff opposed the application by Mr Achoki arguing that the Plaintiff had already testified, was cross examined by counsel for the Defendant in ELC 6 of 2016 and had even been re-examined. Mr. Otieno argued that Mr Achoki was ambushing the Plaintiff and that if Mr Achoki wanted to have the Plaintiff recalled, he should have made a formal application for consideration of the request. He argues that the oral application will greatly prejudice the Plaintiff and that the documents already filed by Mr Achoki should be expunged from the record.

3. Mr Webale for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants supported Mr Achoki's application arguing that it is a party's right to have a witness recalled for further cross-examination and that as the Defendant in ELC 6 of 2016 is crucial to the fair determination of this case, the application by Mr Achoki should be allowed.

4. Mr Achoki in response argued that the documents he had filed are not new to the parties and that they are just extracts from the records held by the Defendant in ELC 6 of 2016 He argued that the Plaintiff will not suffer any prejudice as the court is only interested in dispensing justice.

5. I have considered the oral application by Mr Achoki which is supported by Mr Webale as well as the opposition to the same by Mr Otieno. The only issues for determination in this matter are whether there is need for the Plaintiff to be recalled for cross examination and whether the documents which were filed by the Defendant in ELC 6 of 2016 should be admitted.

6. This is a case where the Plaintiff on the one hand and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the other hand are claiming to be owners of the suit property. There are two consolidated suits in this matter. There is ELC 6 of 2016 where the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in ELC 99 of 2016 are the Plaintiffs and the 3<sup>rd</sup> Defendant in ELC 99 of 2016 is the Defendant. In ELC 99 of 2016, the Plaintiff is Grace Akinyi Ngoge and the Defendants are John Abuya Isanda and Mary Njoki Fundi.

7. I have looked at the record of proceedings of 28<sup>th</sup> January 2020. The previous advocate for Nairobi City County asked the plaintiff whether she was aware that ELC 99 of 2016 had been consolidated with ELC 6 of 2016 and whether the Plaintiff in ELC 99 of 2016 had any claim against Nairobi City County. The Plaintiff answered that she was aware that ELC 99 of 2016 had been consolidated with ELC 6 of 2016 and that she had no claim against Nairobi City County.

8. Nairobi City County had been sued by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this case who were seeking reliefs against the county. Nairobi City County who are the predecessors of Nairobi City Council and Nairobi City Commission are at the center of this dispute because they are the custodians of the records pertaining to allocation of land within the county. The Plaintiff who had testified ought to have been cross examined on the documents which she had in support of her case. Nairobi City County having been sued as a Defendant in ELC 6 of 2016, it was expected that the Plaintiff would have been cross examined based on the documents relied on by the Plaintiffs in that case. This being the case, it is necessary that the Plaintiff be recalled for further cross examination. The Plaintiff had not closed her evidence. She was stood down to go and bring the originals of the documents she was relying on.

9. The court is only interested in getting to the bottom of this dispute and the Nairobi City County being at the center of this dispute, it is necessary that any documents which is in their possession be admitted. The Plaintiff's counsel will have the opportunity to re-examine on any issues which will arise. The documents which had been filed relate to correspondence from Nairobi City County and the records held by them. There is also a statement by one of the officers from the county. Even before these documents were filed, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Mr Webale had asked for summons to bring witnesses from the county and the court had even allowed filing of witness statements from the county. It will therefore be in the interest of justice that the documents which have already been filed be deemed to have been properly filed.

10. There was no need to file a formal application for recalling a witness and no prejudice will be suffered by the Plaintiff. The court is only interested in getting to the bottom of the dispute. I therefore allow the application by Mr Achoki . The Plaintiff shall be recalled for further cross – examination and the documents and witness statement which had been filed by the Nairobi City County are hereby deemed as having been filed properly and are accordingly admitted as part of the documents of the Nairobi City County.

**Dated, signed and Delivered at Nairobi on this 28<sup>th</sup> day of October 2020.**

**E.OBAGA**

**JUDGE**

In the virtual presence of :-

Ms Kitenge and Mr Webale for 1<sup>st</sup> and 2<sup>nd</sup> Defendants in ELC 99 of 2016.

Mr Achoki for Defendant in ELC 6 of 2016.

Court Assistant: Hilda

**E OBAGA**

**JUDGE**