



REPUBLIC OF KENYA



**Nduhiu t/a Hebrew Creation v Eboso & another (Civil Case
6 of 2022) [2025] KEHC 13997 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE 6 OF 2022
DO CHEPKWONY, J
SEPTEMBER 9, 2025**

BETWEEN

JUSTINA WAMUCII NDUHIU T/A HEBREW CREATION APPLICANT

AND

KENNEDY EBOSO 1ST RESPONDENT

CHRISTINE AZENGA 2ND RESPONDENT

RULING

1. The Plaintiff/Applicant filed a Notice of Intention to Cross-Examine dated 24th March, 2025, in which she seeks leave to cross-examine the 1st Defendant/Respondent on the contents of his Replying Affidavit sworn on 19th November, 2024. The Plaintiff also seeks to cross-examine the author of a letter dated 18th July, 2019, annexed to the 1st Defendants Replying Affidavit and marked as annexure “KE-2(a).”
2. On 7th April, 2025, when the matter came up before the court, Mr. Ochieng, learned counsel for the Plaintiff, submitted that cross-examination of the 1st Defendant/Respondent is necessary in light of his assertion on the ownership of certain disputed goods, which are also claimed by the Plaintiff. Counsel argued that without such cross-examination, the court risks being misled on a material issue of ownership. Conversely, Mr. Odongo, counsel for the Defendants, opposed the application, arguing that any issues raised can be adequately addressed at the substantive hearing of the matter.
3. By consent of parties herein, the court has considered the rival submissions and is also guided by the provisions of Order 19 Rule 2 of the Civil Procedure Rules, which vests it with discretion to permit the cross-examination of a deponent. It is settled law that the right to cross-examine a deponent on affidavit evidence is not automatic; a party must lay a proper legal and factual foundation to justify the necessity of such cross-examination. Given the widespread use of affidavits in interlocutory proceedings, courts are required to exercise caution before granting such leave since unrestrained cross-examination at this



stage could unnecessarily prolong interlocutory proceedings and undermine judicial efficiency. The principles governing the exercise of this discretion were well-articulated by Ochieng J. in the case of Ahmednasir Abdikadir & Co. Advocates –vs- National Bank Of Kenya Limited (2) [2006] 2 EA 6, where the Court held that: -

“Cross-examination should only be permitted when it is essential to the just resolution of the matter.”

4. Similarly, in the case of Republic –vs- Kenya Revenue Authority Ex-parte Althaus Management and Consultancy Ltd [2015] eKLR, while citing GGR –vs- HPS [2012] eKLR, the court outlined the guiding criteria for allowing cross-examination of deponents as follows: -

“The law has allowed evidence to be proved by way of affidavits under Order 19. But under Rule 2 of the said Order, the court may order a deponent of an affidavit to attend court to be cross-examined. It would appear that where allegations of matters touching on fraud, mala fides, authenticity of the facts deponed (sic), bad motive among others are raised, cross-examination of a deponent of an affidavit may be ordered. This also extends to where there is a conflict of affidavits on record or where the evidence deponed (sic) to is conflicting in itself. Further, the order for cross-examination is a discretionary order but as is in all discretions, the same must be exercised judiciously and not whimsically. There should be special circumstances before ordering a cross-examination of a deponent on an affidavit. The court must feel that adequate material has been placed before it that show that in the interest of justice and to arrive at the truth, it is just and fair to order cross-examination.”

5. In consideration of the present application, the court finds that no allegations of fraud, dishonesty, forgery, or bad faith have been raised against the 1st Defendant to justify the invocation of this exceptional procedure. The issue of ownership of the subject goods, while material, does not in itself rise to the level of a special circumstance warranting cross-examination of a party at the interlocutory stage. The Plaintiff is at liberty to address any contentious averments through a Supplementary Affidavit, and ultimately, any unresolved issues can be fully ventilated and determined during the trial where all parties will have the opportunity to adduce oral evidence and undergo cross-examination and re-examination.
6. Consequently, the court is not persuaded that the present circumstances justify the cross-examination of the 1st Defendant or the author of the letter annexed to his affidavit. The request is therefore declined.
7. In light of the foregoing, the court issues the following directions:-
 - a. Counsel for the parties to identify all pending applications and indicate whether they intend to file further affidavits in respect thereof.
 - b. All pending applications to be disposed of by way of written submissions. The parties to file and exchange written submissions within fourteen (14) days of each from the date of this Ruling.
 - c. Mention on the matter shall be on the 2nd October, 2025 for the parties to confirm compliance and take further directions.
 - d. Notice to issue upon the Applicants.

It is so ordered.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 9TH DAY OF SEPTEMBER, 2025.

D.O. CHEPKWONY

JUDGE

In the presence of:-

Martin- Court Assistant

No appearance for and by either parties

