



**Blue Cut Limited v Ngoombe & another (Environmental and Land Originating  
Summons 45 of 2020) [2025] KEELC 7759 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7759 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ENVIROMENTAL AND LAND ORIGINATING SUMMONS 45 OF 2020**

**MD MWANGI, J**

**NOVEMBER 11, 2025**

**IN THE MATTER OF LAND PARCEL NO. LR. NO. KJD/KITENGELA/49724**

**BETWEEN**

**BLUE CUT LIMITED ..... PLAINTIFF**

**AND**

**RAPHAEL KINATA NGOOMBE ..... 1<sup>ST</sup> DEFENDANT**

**KAJIADO LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(In respect of the plaintiff's application for summons to witnesses and leave to call an additional witness who has not written a statement)

**Introduction**

1. The plaintiff's application for summons to witnesses and leave to call an additional witness who has not written a witness statement was made after two witnesses had testified but before the closure of the plaintiff's case. Ideally, this is something that would have been sorted out at the pre-trial stage in accordance with the provisions of Order 11 of the Civil Procedure Rules which requires parties in a suit to file and confirm all their documents and witness statements at the pre-trial stage. It is at the pre-trial conference that the issues as the one before the court are raised and settled to facilitate a seamless trial.
2. Under Order 11 Rule 3 (1) of the Civil Procedure Rules, the purpose of a case management conference is expressed to be;
  - a. Promote the expeditious disposal of a case;
  - b. Afford the parties an opportunity to use alternative dispute resolutions mechanisms to determine the case;



- c. Afford the parties an opportunity to settle the case;
  - d. Determine any other matter relating to the management, hearing and disposal of the case;
  - e. Deal with pre-trial applications at first instance or formulate a timetable to deal with them as the court may deem fit; and
  - f. Identify the issues for determination.
3. Adherence with the pre-trial procedures ensures that there are no surprises once the trial begins. Odunga J (as he then was) in the case of Interactive Gaming and Lotteries Limited –vs- Flint E.A. Limited & 2 others (2013) eKLR, observed that the provisions of Order 11 of the Civil Procedure Rules are meant to ensure tht parties to a suit disclose their evidence upfront before the commencement of the hearing of the suit in order to avoid trial by ambush. Referring to his earlier decision in National Bank of Kenya Limited –vs- John Aswani Litondo & another (NBI HCCC 171 of 2016), the learned Judge stated that;

“The rationale of Order 11 is to discourage trial by ambush and ensure that the provisions of Sections 1A and 1B of the *Civil Procedure Act* are meaningfully implemented to create a level playing field for all the parties before the court by ensuring the principle of equality of arms is maintained and as far as practical to place the parties on equal footing. To conceal documents until after the plaintiff’s case is closed was the kind of mischief that the rules intended to cure. Trial by ambush is no longer acceptable in Civil Litigation”.

4. In this case, the court notes that the plaintiff’s case is yet to be closed. The plaintiff in its oral application clarified about the 4 witnesses it intends to call. The 1<sup>st</sup> two are advocates of this court who were in one way or another involved in the transaction giving rise to this case. The 3<sup>rd</sup> witness by the name of Richard Mwangi had already sworn an affidavit which is on record and which will be the basis of his evidence.
5. Though the 4<sup>th</sup> witness has not written a statement, he is the proprietor of the parcel of land Ngong/Ngong/52269 which was allegedly purchased for 1<sup>st</sup> defendant by the Plaintiff company for the sum of Kshs. 5,150,000/-. He is therefore a material witness whose evidence is necessary for the just determination of this case.
6. From the foregoing, I agree with the plaintiff’s position that the four witnesses are necessary witnesses to allow just determination of this case. This court will therefore, exercising its authority and discretion under Section 22(b) of the *Civil procedure Act* allow the calling of the four witnesses to aid in the just determination of this matter. I see no prejudice to the defendants as they will have an opportunity not only to cross-examine the witnesses but also file any further witness statements to respond to any new issues that may be raised in the statements of the additional witnesses by the Plaintiff.
7. To allow the defendants adequately prepare to cross-examine the four witnesses, their witness statements must be filed and served in the next 21 days. The court will proceed to give a date for further hearing of the Plaintiff’s case.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 11<sup>TH</sup> DAY OF NOVEMBER,2025.**

**M.D. MWANGI**

**JUDGE**



In the virtual presence of:

Ms. Wangari alongside Mr. Kofuna for the Plaintiff

Ms. Kihenjo for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup> Defendant

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

