

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO 1337 OF 2016

KARIOBANGI SOUTH LAND OWNERS

WELFARE GROUP	-	1ST PETITIONER
JAMES MBUGUA KIMIRI	-	2ND
PETITIONER		
SABINA MANDERE	-	3RD
PETITIONER		
JOSEPH JUMA OMENYA & OTHERS	-	4TH
PETITIONER		

VS

NAIROBI CITY COUNTY	-	1ST
RESPONDENT		
GOVERNOR, NAIROBI CITY		
COUNTY	-	2ND
RESPONDENT		
CHIEF LANDS OFFICER	-	3RD
RESPONDENT		
COUNTY SECRETARY -NAIROBI		
CITY COUNTY	-	4TH PETITIONER
NATIONAL LAND COMMISSION	-	5TH PETITIONER
AND		
KARIOBANGI SOUTH JUA KALI		
SOCIETY	-	INTERESTED PARTY

RULING

1. On 28/7/25, Mr Ondieki, the learned Counsel for the Petitioners, made an oral application and sought leave to recall PW1, namely Sabina Mandere, to testify in order to clarify certain issues that had arisen during the hearing. The second reason given for the recall was to enable the court to better understand her evidence, and the third reason was that no party would suffer any prejudice. Additionally, he argued that, in any case, the provisions of Article 50 of the Constitution would permit such an application.
2. Responding to the oral application, Mr Oduyo, Learned Counsel for the 1st - 4th Defendants, stated that although he would not object to the application, he insisted that counsel for the Petitioner's must disclose the nature of the emerging issues that have necessitated the application.
3. Learned State Counsel Ms Ndundu readily objected to the application on the grounds that the application seeks to fill the gaps in the evidence adduced by the Petitioners 'claimants and insisted that Mr Ondieki had the liberty to file a formal application for consideration and determination on merits by the court.
4. Mr Mbaabu, learned counsel for the 1st interested party, opposed the application. He stated that PW1 had concluded her testimony, which is now part of the court record. That, in any event, counsel for the petitioners has not disclosed the nature of the evidence intended to be adduced by PW1 on recall nor the extraordinary circumstances that warrant any recall in the first place.

Similarly, the Learned Counsel concluded that the anticipated recall aims to repair the petitioners' case, given that PW1 had been sitting through the proceedings in court. Furthermore, he argued that his clients would be prejudiced and that the recall would serve no purpose.

5. Mr Kinyua, Learned Counsel for the 2nd Interested Party, adopted the opposition voiced by Mr Mbaabu and argued that there is no compelling reason to allow the application.
6. In rebuttal, Mr Ondieki, Learned Counsel for the Petitioners, stated that the grounds of opposition raised by Counsel for the Respondents and the Interested Parties were unfounded. He added that PW1 is a party to the suit and therefore eligible to remain in court throughout the proceedings. He clarified that her evidence will be limited to her witness statement on pages 434-436 of the Plaintiff's Trial Bundle.
7. The key issue for determination is whether the Petitioner is entitled to orders allowing them to recall PW1 to testify.
8. Section 146 of the Evidence Act grants power to a court to recall a witness. It states as follows;

146 Order and direction of examinations.

- (1 Witnesses shall first be examined-in-chief, then, if the) adverse party so desires, cross-examined, then, if the party calling them so desires, re-examined.
- (2 Subject to the following provisions of this Act, the) examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness

testified in his examination-in-chief.

(3 The re-examination shall be directed to the) explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(4 The court may, in all cases, permit a witness to be) recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination, respectively.

9. Order 18 Rule 10 of the Civil Procedure Rules provides as follows ;

“[Order 18, rule 10.] The court may recall and examine a witness. 10. The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force, put such questions to him as the court thinks fit”.

10. The power to recall any witness can be exercised by the court either suo moto or on application by either of the parties in the suit. It is therefore a discretionary power that the court is called upon to so exercise with greatest care and circumspection.

11. The power to recall a witness already examined is given to the court is given to the court and not a party. This power is intended to be sparingly applied and for the purposes of clarifying any ambiguities, and not for filling in

lacunas in the case of a party. Even when the court permits a witness recall where the evidence on re-examination in chief has a bearing on the ultimate decision of the suit, the defendant will be allowed to cross-examine the witness in line with the provisions of Section 146 of the Evidence Act.

12. It is trite that the court's discretion must be exercised within the parameters of the law; that is, in the interest of justice and not to

13. In this case, an application has been made to recall PW1 to clarify some issues that arose from the hearing and for the court to understand her evidence properly. Furthermore, the applicant stated that the recall would be limited to the witness statement on record. However, the applicant has not explained to the court the specific issues the witness is expected to clarify. In the absence of a clear explanation, the application remains speculative. Mr Ondieki added in closing submissions that the witness is not likely to add anything new to her evidence. This statement alone implies that if there is nothing new to add, then recalling this witness may serve no purpose after all.

14. Absent any evidence that would be deemed material or necessary for a fair determination, or that would ultimately influence the outcome of the case by the applicant, the application is considered unmerited and is dismissed with no order as to costs.

15. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH DAY
OF NOVEMBER 2025 VIA MICROSOFT TEAMS.**

J. G. KEMEI
JUDGE

Delivered Online in the presence of:

1. Ms Nyakundi HB for Mr Ondieki
2. Mr Ochieng for the 1st - 4th Respondents
3. N/A for the 5th and 6th Respondents
4. Mr Mbaabu for the 1st Interested Party
5. Mr Etyang for the 2nd Interested party
6. CA- Ms Yvette Njoroge