



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

ELC CASE NO. 816 OF 2012

(AS CONSOLIDATED WITH ELC CASE NO. 47 OF 2010)

RAJAB AHMED KARUME.....PLAINTIFF

VERSUS

THE CHIEF REGISTRAR.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

INSURANCE TRAINING AND EDUCATION TRUST.....3RD DEFENDANT

RULING

1. On 7th May, 2019 the Plaintiffs in ELC 47 of 2010 presented the evidence of their second witness M/s Bibianah Achieng’ Rabuku a licensed surveyor. After this witness had been examined in chief, cross-examined and re-examined, Mr. Ochieng Oduol for the 1st Defendant in the case applied to the Court to make an order that the witness comes back for purposes of answering a question which she did not answer.
2. Mr. Ochieng Oduol’s application was premised on an answer which the witness gave during cross-examination. The witness had been asked to confirm whether by looking at the survey plan, and deed plan one could establish the location of a particular parcel of land. In answer to this question, the witness stated that one can only establish that by going through the survey records and carrying out calculations before one could establish the location of a particular parcel.
3. Mr. Ochieng Oduol’s application was opposed by Mr. A.G.N. Kamau who argued that it was unnecessary to ask the witness to come back; that the witness was a private surveyor whose expenses he had to meet and that if Mr. Ochieng Oduol wished to have an answer to the issue he was raising, he was at liberty to call evidence of another expert.
4. On his part, Mr. Muchoki opposed the application by Mr. Ochieng Oduol arguing that there was a government surveyor who had been called by the Attorney General and that the kind of questions which Mr. Ochieng Oduol was raising could have been directed to the government surveyors.
5. In answer to the opposition to his application, Mr. Ochieng Oduol argued that the government surveyors came to give lies to Court and that the witness who had testified appeared to be truthful and that there will be no prejudice suffered to the other parties if the witness was to come back to answer the question.
6. I have considered the application by Mr. Ochieng Oduol as well as the opposition thereto by Mr. A.G.N. Kamau and Mr. Muchoki. There is evidence on record in respect of the deed plan in respect of which the witness was being cross-examined. The said evidence was to the effect that the deed plan in question relates to a property in Kiambu. The witness herein testified and completed her evidence. The answer she gave to the question she was asked is that one cannot tell the location of a particular land unless one carries out certain calculations. If Mr. Ochieng Oduol was keen on having the witness go and carry out the calculations, he should not have let the witness complete being cross-examined, re-examined before he could make the application.
7. The witness who had testified before this one stated the reasons why they thought that the deed plan in issue was for a plot in Kiambu County. Whether that is true or not is a question of evidence which will have to be examined by the Court. It will be upon the Court to determine whether this witness refused to answer the question as asked or not. Mr. Ochieng Oduol cannot conclude that the government surveyors were lying and that if the witness herein were to be recalled, she would give truthful evidence. I therefore find no merit in Mr.

Ochieng Oduol's application which is hereby dismissed with costs.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **8th** day of **May, 2019**.

E.O.OBAGA

JUDGE

In the presence of

Mr. Muchoki for Plaintiff in ELC 816/2012.

Mr. A.G.N Kamau for Plaintiff in ELC 47/2010

Mr. Ouma for Mr. Ochieng Oduol for 1st Defendant in ELC 47/2010.

Court Assistant Hilda