



REPUBLIC OF KENYA



Waso Trading Co Limited & another v Epuyo & 277 others (Environment and Land Case E027 of 2021) [2026] KEELC 122 (KLR) (19 January 2026) (Ruling)

Neutral citation: [2026] KEELC 122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E027 OF 2021**

BM EBOSO, J

JANUARY 19, 2026

BETWEEN

WASO TRADING CO LIMITED 1ST PLAINTIFF

ABDI GALGALO GONJOBE 2ND PLAINTIFF

AND

JOSEPH KALAPATA EPUYO 1ST DEFENDANT

GABRIEL MASUNTEN 2ND DEFENDANT

THE OCS NDUMURU POLICE STATION 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

COUNTY GOVERNMENT OF MERU 5TH DEFENDANT

LAND REGISTRAR MERU NORTH 6TH DEFENDANT

BAARIU SILAS M'LIMUNGI 7TH DEFENDANT

**DISTRICT LAND ADJUDICATION OFFICER MERU NORTH 8TH
DEFENDANT**

**MERU UNIVERSITY OF SCIENCE & TECHNOLOGY & 269 OTHERS & 269
OTHERS 9TH DEFENDANT**

RULING

1. This matter came up for trial directions before the Trial Judge on 30/6/2025. On that day, the Trial Judge issued the following trial directions: (i) hearing shall start denovo; and (ii) hearing shall be in physical/open court. The court fixed the case for hearing on 1/10/2025.



2. Subsequent to that, the plaintiffs changed advocates. On the day scheduled for hearing of the case, the plaintiffs' new advocates informed the court that they had filed an application dated 19/9/2025 seeking: (i) a review of the order of 30/6/2025 and issuance of an order that the suit be heard virtually on 1/10/2025; and (ii) an order that another date be issued for hearing of the suit in open court and the defendants who insist on open court hearing be condemned to meet the plaintiffs' witness expenses. The application was opposed and is the subject of this ruling.
3. The application was premised on the grounds outlined in the motion and in the 2nd defendant's affidavit dated 19/9/2025. It was canvassed through oral submissions tendered in open court on 17/11/2025. The case of the plaintiffs was that the 2nd plaintiff was their main witness and he resided in the United States of America where he worked as a medical practitioner. They lost communication with their previous advocate and were not aware of the directions issued by the court on 30/6/2025. Due to short notice, it was not possible for the witness to travel to Kenya and present their evidence physically in open court.
4. The plaintiffs further stated that they were willing to have the case heard in open court and prayed for another hearing date and an order condemning the defendants who insist on open court hearing to cater for their witness travelling and upkeep expenses.
5. In their oral submissions, the plaintiffs advocate argued that the previous advocate did not have sufficient instructions and did not know that the "plaintiffs" resided outside the country. Counsel added that the allegation that the dispute involved allegations of fraud by the plaintiffs was "neither here nor there."
6. The 3rd, 4th, 6th, 7th and 8th defendants, through the Attorney General, filed grounds of opposition dated 7/10/2025 in which they stated that the dispute involved voluminous bundles of documents, many of which were forgeries, hence the need to have all the witnesses physically in court for efficient hearing.
7. The 9th -270th defendants opposed the application through a replying affidavit sworn on 26/9/2025 by Joseph Kiburi Kiecha in which they contended that the suit involved a plethora of documents by the plaintiffs, most of which were highly contested, hence the need for a hearing in open court. They added that at the time of issuing trial directions, the court took into account all factors and circumstances. They termed the application an attempt to further procrastinate the hearing and determination of the suit.
8. The court has considered the application, the responses to the application, and the parties' respective submissions. Prayer 1 was a plea for an ex-parte hearing of the application in the first instance. At this point, it is spent. Prayer 2 was a plea for an order reviewing the order of 30/6/2025 and directing that this suit be heard virtually on 1/10/2025. This prayer is equally spent because the hearing of 1/10/2025 aborted due to the need to first dispose the highly contested application.
9. What remains for consideration is prayer 3, which is a plea for an order that this case be heard virtually and the defendants who insist on physical/open court hearing be condemned to provide the plaintiffs' witness travel and upkeep expenses. Consequently, the two questions that fall for determination are: (i) Whether a proper basis has been demonstrated to warrant a review of the order of 30/6/2025 requiring physical/open court hearing; and (ii) Whether a proper case has been made to warrant condemning of any of the defendants to bear travelling and upkeep expenses of the plaintiffs' witnesses at this point. I will be brief.
10. A reading of the application and the supporting affidavit indicates that the plaintiffs are willing to have the matter heard in open court. All they want is a date that is convenient and an order that the



defendants who are insisting on open court hearing [physical attendance] be condemned to pay their witness travelling and upkeep costs. Indeed, in ground number (G) of the notice of motion, they stated thus:

“G. The plaintiffs are also willing to have the matter heard in open court but pray for another hearing day and the defendants who are insisting for the matter to be heard in open court to cater for travel expenses and upkeep.”

11. The above position was replicated in paragraph 8 of the supporting affidavit. This remains the position which the plaintiffs pleaded and advanced by affidavit evidence. Consequently, although they took a different position in their subsequent oral submissions, this is the position which they pleaded and advanced through evidence.
12. The only reason advanced in support of the plea for a virtual hearing is that the 2nd defendant resides in Minnesota in the United States of America. The position taken by the defendant is that this dispute involves a lot of documents some of which the Government Officers involved in the matter allege are forgeries. They want the plaintiffs’ witnesses to attend court physically and be cross-examined on the alleged forged documents with ease.
13. Taking the above circumstances into account, the court agrees with the defendants that given the documents involved in this dispute, physical attendance is the appropriate trial mode. Consequently, the court comes to the finding that no proper basis has been demonstrated to warrant a review of the order of 30/6/2025.
14. Is there a basis for condemning any of the defendants to bear travelling and upkeep expenses of the plaintiffs’ witnesses at this point? This suit was filed by the plaintiffs against the defendants. The defendants are in court because they were sued by the plaintiffs. The 1st plaintiff is a company alleged to be registered in Kenya. The suit land is located in Kenya.
15. Secondly, the general principle on costs is contained in Section 27 of the *Civil Procedure Act* and provides that costs follow the event. The fact that the 2nd plaintiff now resides in the USA is not a proper basis for departing from the principle and condemning any of the defendants to bear costs at this point. That is the finding of the court.
16. The result is that the application dated 19/9/2025 is rejected and dismissed for lack of merit.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF JANUARY, 2026

B M EBOSO [MR]

ELC JUDGE

