



Kiarie & 7 others v Kamau (Sued as the Administratrix of the Estate of Kamau Njuguna Mahianyu (Deceased) and in her own Name/on her own Behalf) (Environment and Land Case E003 of 2022) [2026] KEELC 1387 (KLR) (4 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1387 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND CASE E003 OF 2022**

**LN MBUGUA, J
MARCH 4, 2026**

BETWEEN

**GRACE WAMBUI KIARIE 1ST PLAINTIFF
JOHN KARIERI KAMAU (SUING AS THE ADMINISTRATIX AND
ADMINISTRATOR RESPECTIVELY OF THE ESTATE OF KAMAU NJUGUNA
MAHIANYU (DECEASED) AND ON THEIR OWN BEHALF) 2ND PLAINTIFF
MARGARET WANGARI KAMAU 3RD PLAINTIFF
MARY NJERI KAMAU 4TH PLAINTIFF
RUTH MUKAMI KAMAU 5TH PLAINTIFF
JANE WANJIKU KAMAU 6TH PLAINTIFF
PETER WOKABI KAMAU 7TH PLAINTIFF
JAMES MACHARIA KAMAU 8TH PLAINTIFF**

AND

**HANNAH WAIRIMU KAMAU (SUED AS THE ADMINISTRATIX OF THE
ESTATE OF KAMAU NJUGUNA MAHIANYU (DECEASED) AND IN HER
OWN NAME/ON HER OWN BEHALF) DEFENDANT**

RULING

1. The hearing of this case is underway of which on 3.2.2026, Plaintiffs' counsel informed the court that they were closing their case without calling the Land Adjudication officer. Counsel for the Defendant then made an application for summons to issue to the Director land adjudication and settlement to give



- evidence for the Defendant. This application was opposed by Plaintiffs' counsel who averred that at this juncture, the Defendant cannot introduce a witness who was specifically a witness for the Plaintiffs.
2. In rejoinder, counsel for the Defendant stated that indeed the witness was listed as a witness for the Plaintiffs, but Plaintiffs' side have declined to call him, yet this is the allocating authority, adding that where a party fails to call a witness, the defence is entitled to call such a party. It is argued that no prejudice will be occasioned to either party if the witness is allowed to avail the allocation records.
 3. I have considered the arguments for and against the application made by defence to call the Director Land Adjudication and Settlement Officer. A perusal of the records reveals that on 24.7.2025, the court embarked on undertaking a case management exercise where counsel for the Plaintiffs indicated that "We shall also call an expert witness, the DLASO (Director Land Adjudication and Settlement Officer)". This is the witness that the Plaintiffs have now abandoned as they closed their case. Such an expert witness owes a duty to the court, not just to the party calling them, and their evidence is expected to be independent and objective. See *Stephen Kanini Wangondu v The Ark Ltd (2016) eklr.*
 4. The provisions of Section 144 (2) of the *Evidence Act* provides that;

"The court shall admit the evidence of any fact if it thinks that the fact, if proved, would be admissible and not otherwise".
 5. In the case at hand, the fact of allocation of the suit land is central in the dispute at hand, and the records of such allocation are to be found in the department of Adjudication and Settlement. It follows that the proposed witness is crucial in unearthing the circumstances surrounding the allocation of the suit land.
 6. The provisions of Article 159 (2) (d) entreat the courts to administer justice without undue regard to procedural technicalities. To this end, I find that the application made by the defence counsel is merited, thus summons are to issue to the Director Land Adjudication and Settlement Officer as prayed.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 4TH DAY OF MARCH, 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of;

