



**Ouko v Mathigo & another (Civil Case E063 of 2025)
[2026] KEHC 2559 (KLR) (Civ) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E063 OF 2025**

**SN MUTUKU, J
FEBRUARY 26, 2026**

BETWEEN

MARY OUKO PLAINTIFF

AND

SALOME MATHIGO 1ST DEFENDANT

VIDELIS KIMONI 2ND DEFENDANT

RULING

1. Hearing in this matter commenced on 9th February 2026. The case was slotted for hearing on 9th and 10th February 2026. The Plaintiff completed giving her testimony and called her witness, one Sipra Munguti, to give her evidence. Sipra completed her evidence in chief and cross-examination commenced.
2. It is during the cross-examination, based on the answers Sipra was giving, that an objection was raised by counsel for the Defendant, Ms Nyabanje, who was holding brief for Ms Nduku.
3. Ms Nyabaje applied for the witness to be stepped down. The reasons given for this application were that the witness was present when the Plaintiff was giving evidence “because she is repeating what the Plaintiff had stated”. Counsel stated that the Plaintiff’s evidence could not be trusted because her witness was present when the Plaintiff testified.
4. This application was opposed by Mr. Akude, counsel for the Plaintiff, who termed the application as an afterthought and that every witness had an opportunity to make their own statement.
5. In rejoinder, Ms Nyabanje stated that procedure does not allow a witness to be present when the other witness is testifying and that the witness repeated the evidence of the Plaintiff by using the same words. Counsel stated that she felt that Sipra was present when the Plaintiff was giving evidence.



6. I have considered this matter. The evidence being question is Sipra's reference to the clip which is part of the evidence of the Plaintiff. She said that could not explain the noise but she could hear 'du' 'du' 'du' as if someone was walking.
7. I have read the evidence by the Plaintiff on that clip. She told the court that she had listened to it and had heard a light noise "like something hitting 'du' 'du' 'du'. She said she could not relate that noise to anything.
8. I have considered this application. The reasons given for believing that Sipra was present in court when the Plaintiff was giving her evidence is that she repeated the words 'du' 'du' 'du', in reference to the sound she heard when she listened to the recording in the clip. In fact, Ms Nyabanje used the words, "I feel she was present" meaning she felt that Sipra was present in court when the Plaintiff was giving her evidence.
9. This matter was proceeding virtually. Ms Nyabanje did not state that she saw Sipra linked to the court when the Plaintiff was giving her testimony. Counsel did not have evidence nor did she raise the attention of the court, that there was a witness present in court during the testimony of the Plaintiff. This is an error of virtual proceedings and the hearing was fixed for hearing virtually on 20/11/2025 with concurrence of the court and the parties through their counsel. The challenges of virtual hearing is that the court is not able to know who is linked to the court during the hearing.
10. To my mind, the procedure to keep the witnesses away from the court when another witness on the same side is giving evidence is to avoid compromising the case by having the yet to testify witness not hear what the testifying witness is telling the court. This would prejudice the opposing party.
11. I have considered this evidence. The case is yet to be heard fully. None of the parties or the court know how the case will end. In my considered view, there is no evidence that Sipra was present in court when the Plaintiff was giving her testimony because Ms Nyabanje acted on what she felt or believed happened because Sipra repeated the expressions, 'du', 'du', 'du', which had been stated by the Plaintiff. This is not sufficient evidence. There is absolutely no prejudice caused on the part of the Defendants, and besides, this is a matter that the defendants, through their counsel can submit on if that becomes necessary.
12. Consequently, I decline to uphold the objection and direct that Sipra be recalled to proceed with her testimony. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26/2/2026 IN THE PRESENCE OF MR. AKUDE FOR THE PLAINTIFF AND MS NYABANJE FOR THE DEFENDANTS.

S. N. MUTUKU

JUDGE

