



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. 99 OF 2003**

**NG'OLUA MWAINA ..... PLAINTIFF**

**VERSUS**

**ALEXANDER KAMATHI M'ITHILI.....1<sup>ST</sup> DEFENDANT**

**BETHA GACHERI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. On 30/7/2019 Mr. Thangicia counsel for the 1<sup>st</sup> defendant made an oral application to recall the 2<sup>nd</sup> defendant/interested party for cross-examination as the 1<sup>st</sup> defendant did not have a chance to cross examine him. The proceedings herein indicate that the interested party testified on 19/3/2019 where the cross examination done by the defendant went on as follows; **“where do you stay?”** nothing more nothing less.

2. The law provides for the recalling of witnesses under *Section 146(4) of the Evidence Act Cap. 80* where it is stipulated that:-

***“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.”***

3. *Article 159 of the Constitution* stipulates that justice shall be done to all. One of the ways to ensure this is done is by giving each and every party an opportunity to be heard including according such parties a chance to conduct cross-examination of witnesses. A perusal of the record clearly reveals that the 1<sup>st</sup> defendant did not really cross examine the interested party as he simply inquired where the latter stays.

4. Consequently, I do allow the application to recall the interested party for cross examination by the counsel for 1<sup>st</sup> defendant only.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 10<sup>TH</sup> DECEMBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Kirimi Muthuri holding brief for Kirimi Nginaru for plaintiff

Thangicia for 1<sup>st</sup> defendant

Plaintiff

1<sup>st</sup> defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**