



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 67 OF 1998

ESTHER KATHAMBI DELFIN.....PLAINTIFF

VERSUS

M'IMBERE KERAINE.....DEFENDANT

RULING

1. This ruling is in respect of the application made orally by Mr. Karuti, counsel for the plaintiff on 15.10.2019 where orders were sought to cross examine DW 1, who had earlier on testified but was not cross examined by the said counsel. Mr. Karuti averred that filing a formal application will only delay this matter further.

2. Mr. Abuor for the defendant objected to the application averring that the matter should proceed from where case had stopped and that a formal application ought to be filed.

3. Almost a year and half ago on 6.7.2018, Mr. Karuti made an application to recall the witness (DW1) who testified on 14.6.2018 for cross examination. The application was opposed on that day by Mr. Abuor who averred that Mr. Karuti had appeared before Judge Cherono who was handling the matter on that day and that the matter was scheduled for 2.00 pm, however Mr. Karuti did not appear that afternoon but the plaintiff had proceeded to cross examine the witness (DW 1).

4. I have perused the record. I find that this matter was substantially heard by Justice Cherono during the ELC service week. It appears that earlier in the day of 14.6.2018, Mr. Karuti had ceased acting for the client (plaintiff). Perhaps this issue of representation is what prompted Mr. Karuti not to appear before court that afternoon.

5. Ordinarily, such applications to cease acting ought not to be made on the date of hearing, more so where the matter is old and is being handled by a visiting judge.

6. On the other hand, this court is conscious of the fact that the right to be heard which is anchored in the Latin Maxim ***“Audi Alteram Partem”*** should be guarded jealously by the courts.

7. The provisions of Article 50 (1) of the constitution also stipulate that;

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.

8. The right to be heard extends to having an opportunity or platform to cross examine the opponent party.

9. This matter is already over 21 years old. A formal application will only delay the matter further. I also find that the defence has not demonstrated the prejudice they stand to suffer if DW1 is recalled for cross examination.

10. In the circumstances I allow the application to have DW 1 cross examined. Thereafter, matter is to proceed from where case had stopped.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF DECEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Defendant

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE