



**Jeremiah's Creek Limited v Ndungu; Imwati (Interested Party) (Environment & Land Case 103 of 2021) [2024] KEELC 237 (KLR) (29 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 237 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KWALE  
ENVIRONMENT & LAND CASE 103 OF 2021**

**AE DENA, J  
JANUARY 29, 2024**

**BETWEEN**

**JEREMIAH'S CREEK LIMITED ..... PLAINTIFF**

**AND**

**TABITHA NDUNGU ..... DEFENDANT**

**AND**

**ANDREW THIANIE IMWATI ..... INTERESTED PARTY**

**RULING**

1. On 11/12/23 the Plaintiff closed its case. Mr. Tindika Counsel for the Defendant made an oral application seeking to have one L.N Mbatia Advocate testify as a witness in the matter. Mr. Khakula Counsel for the Plaintiff raised an objection on the grounds that witness had never filed any witness statement and that pre-trial protocols were closed. He stated that allowing her testimony would be prejudicial as the Plaintiff had already closed its case.
2. Mr. Tindika in a brief rejoinder informed court that L.N Mbatia was a lawyer and would appear as a professional witness, that she did not need to file a witness statement. He stated that the said person had been referred to extensively in cross examination of other witnesses and was not new to the proceedings. Mr. Khakula having not been convinced by this assertion stated that Order 11 and the *Evidence Act* were clear on expert witnesses and what they are. That had L.N Mbatia been an expert then a report would be in court. That no proper reason as to why the said witness was not previously presented before court had been advanced and as such the application should not to be allowed.
3. I am now tasked with determining whether L.N Mbatia should be allowed to testify in these proceedings.



4. In my understanding, case management is a series of steps laid under the Civil Procedure Rules to guide the court and its users on case preparation before the matter is set down for hearing. **Order 11** of the [Civil Procedure Rules](#) provides for case management as follows; -
3. (1) the purposes of a case management conference shall be to-
- a) Promote the expeditious disposal of cases;
  - b) Afford the parties an opportunity to use alternative dispute resolution mechanisms to determine the case;
  - c) Afford the parties an opportunity to settle the case;
  - d) Determine any other matter relating to the management, hearing or disposal of the case;
  - e) Deal with pre-trial application at first instance or formulate a timetable to deal with them as the court may deem fit; and
  - f) Identify the issues for determination.
5. I have perused Defendants witness statement and the documents to be relied upon. It is evident that L.N Mbatia played a role in the transactions leading to the suit before court, indeed from the proceedings the said intended witness has been mentioned severally and thus the name is not strange to the proceedings. Section 19(2) of the [Environment and Land Court Act](#), No. 19 of 2011 provides that this court shall be bound by the procedure stipulated in the [Civil Procedure Act](#), however, Section 3 of the said Act also provides that the main purpose of the Act is to enable the Environment and Land Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes. For this main objective of the court which is dispensation of justice to all to be achieved, I opine that allowing a witness who will shed more light on the issues before court and lead to a just finding by the court is necessary.
6. I see no prejudice that will be occasioned to the Plaintiff. The opposing counsel will have the chance to interrogate whatever it is that will come out of the said witness's testimony through cross examination. Mr. Khakula is further given the leeway to re-open his case for the Plaintiff to be allowed to testify and be examined on the contents of the evidence that would have been tendered by L.N Mbatia. In the interest of justice, I allow the application by Mr. Tindika Counsel.
7. Costs shall be in the cause.
- Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED THIS 29<sup>TH</sup> DAY OF JANUARY 2024.**

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**A.E DENA**

**JUDGE**

Mr. Khakula for the Plaintiff

Mr. Tindika for the Defendant

Daniel Disii – Court Assistant

