



**Kibuna v County Government of Nairobi & 4 others (Environment & Land
Case 529 of 2018) [2024] KEELC 894 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 894 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 529 OF 2018
LN MBUGUA, J
FEBRUARY 22, 2024**

BETWEEN

JEDIDA NGINA KIBUNA PLAINTIFF

AND

COUNTY GOVERNMENT OF NAIROBI 1ST DEFENDANT

ABRAHAM MWANGI NJIHIA 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

MORRIS GITONGA NJUE 4TH DEFENDANT

VERA MWASI 5TH DEFENDANT

RULING

1. During hearing of the case for the 2nd Defendant on 18.12.2023, the 2nd Defendant while giving evidence in chief sought to comment on a witness statement filed by one Mr. Erick Obwao. This move was objected to by counsels for the plaintiff and the 1st Defendant on the basis that reference could not be made to a witness statement which has been withdrawn, and further, that the court had determined so vide its ruling dated 6.10.2022.
2. Counsel for the 4th and 5th Defendants supports the 2nd Defendant arguing that though withdrawn, the statement of Erick Abwao is still on record and this court has wide discretion under the [ELC Act](#) in matters of taking evidence as it is not bound by the [Civil Procedure Rules](#).
3. Counsel for the 2nd Defendant argued that since his witness is still giving evidence in chief, opposing counsels will have an opportunity to cross-examine the witness.



4. He averred that the 2nd Defendant requested for witness summons to summon Mr. Erick Abwao and Mr. Nyandoro to testify through a letter addressed to the court's Deputy Registrar but they were informed that such summons are issued by the judge.
5. I have considered the arguments raised herein. It is on record that the said statement of Eric Obwao was withdrawn by the 1st Defendant and was replaced by the witness statement of Benson Ndegwa Gichohi dated 4.6.2021. In the ruling dated 6.10.2022, this court pronounced itself that it would be prejudicial to refer to the witness statement of Mr. Erick Abwao which had been withdrawn and substituted by another one. To this end, this court cannot make another contrary pronouncement on the issue at hand.
6. On the issue of summons, I find that this case went through pre-trial conference and on 6.10.2022, all parties certified that they were ready to proceed. The Overriding Objective set out under Section 1A and 1B of the *Civil Procedure Act* provides for just, expeditious, proportionate and affordable resolution cases. Further, the Practice Directions vide gazette notice no. 5178 dated 25.7.2014 makes provisions as to how and what should happen during the pretrial conferences. The directions to be given under Clause 28 (b) thereof are; "The issuance of summons for witnesses to attend court to testify....."
7. Nowhere during the pretrial conferences did the 2nd defendant apply for summons before the court. At this advanced stage of the trial when the Plaintiff and the 1st Defendant have closed their cases, this court would not be doing justice if it allows 2 fresh witnesses to be called.
8. In the final analysis, the objection raised by plaintiff and 1st defendant is upheld. The witness on the dock shall not make reference to the statement of Eric Obwao and no witnesses shall be summoned at this stage of the trial.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kitinya holding brief for M/s Kwanga for Plaintiff

Nyareso for 1st Defendant

Ondabu for 2nd Defendant

Njeru for 4th and 5th Defendant

Court assistant: Eddel

