



Butasi & another v Njuguna & another (Environment & Land Case 15 of 2021) [2025] KEELC 204 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 204 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 15 OF 2021
LC KOMINGOI, J
JANUARY 30, 2025**

BETWEEN

ALFRED WANAMBISI BUTASI 1ST PLAINTIFF

ESTHER K. BUTASI 2ND PLAINTIFF

AND

LUCY NJUGUNA 1ST DEFENDANT

JUSTUS KETON 2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 28th March 2024 brought under;

(Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 51 of the Civil Procedure Rules, 2010. Article 159 (d) of *the Constitution* of Kenya and all other enabling provisions of the Law).
2. It seeks Orders;

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1}}.
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2}}.
3. That the court be pleased to grant leave to allow the firm of Namiinda & Company Advocates cross examine the 1st Plaintiff.

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4}}.
5. That the court allows, the Applicant’s application dated 4th December 2023.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 3.



4. The Application is supported by the Affidavit sworn by Lucy Njuguna, the 1st Defendant/Applicant on the 28th March 2024.
5. The Application is opposed.
There is a Replying Affidavit sworn by Alfred Wanambisi Butasi, the Plaintiff/Respondent, on the 12th February 2024.
6. The Application was canvassed by way of oral submissions.
7. I have considered the Notice of Motion, the affidavit in support, the response thereto and the oral submissions. The issue for determination is whether this Application is merited.
8. It is the 1st Defendant's/Applicant's case that she is desirous of defending her proprietorship of the five acre parcel of land that the 1st Plaintiff is seeking to dispossess her of.
9. The 1st Plaintiff/Respondent on the other hand contends that the Application is an abuse of court process and a delaying tactic as the matter has been in court for the last nineteen (19) years.
10. I have considered the reasons given for the 1st Defendant's/Applicants non attendance on 23rd October 2023, when the matter proceeded ex parte.
I find that the reason given is plausible.
11. I am also guided by Article 159 (2) (d) of *the Constitution* which implores courts not to dwell on technicalities but deliver substantive justice.
12. I therefore find merit in this application and I grant the orders sought namely;
 - a. That Ms. Namiinda Advocate for the 1st Defendant/Applicant is hereby allowed to cross-examine the 1st Plaintiff.
 - b. That the 1st Defendant is hereby allowed to prosecute her case.
 - c. That the 1st Defendant do pay to the 1st Plaintiff throw away costs of Kshs.10,000/= within twenty one (21) days from the date of this ruling.
 - d. That the costs of this application be borne by the 1st Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JANUARY 2025.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mrs. Odero for the 1st Plaintiff.

N/A for the 2nd Plaintiff.

Ms. Namiinda for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant – Mutisya.

