



Maloiy v Maloiy & 5 others (Environment and Land Case Civil Suit 104 of 2019) [2024] KEELC 1322 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 104 OF 2019
MN GICHERU, J
MARCH 14, 2024**

BETWEEN

GEOFFREY MORIASO MALOY APPLICANT

AND

GEOFFREY MORIASO MALOY 1ST DEFENDANT

HANNAH W. MACHARIA 2ND DEFENDANT

LAND REGISTRAR, KAJIADO NORTH 3RD DEFENDANT

THE CHIEF LAND REGISTRAR, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 4TH DEFENDANT

PRINCIPAL SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 18/5/2023. The motion which is by the plaintiff seeks the following orders.
 - 2) That this court be pleased to quash/halt its direction to file submissions and judgment date scheduled for 7/11/2023.
 - 3) That in light of prayer (2) above, this court be pleased to reopen the defence case.
 - 4) That this court be pleased to recall the first and second defendants for further examination in chief, further cross-examination and re-examination for the purposes of a fair trial and just determination of the real issues in dispute.



The motion which is brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Orders 18 Rule 10 and 51 Rule 1 of the Civil procedure Rules, Article 159 (2) (d) of the Constitution of Kenya and Section 146 (4) of the Evidence Act and all other enabling provisions of the law is based on seventeen grounds and is supported by an affidavit sworn by the plaintiff dated 18/5/2023.

2. In summary, the applicant states as follows.

Firstly, her counsel did not cross examine the second defendant on 24/4/2023 on the ground that the said defendant was illiterate.

Secondly, the first defendant was not present in court and could not therefore be cross-examined on important matters arising in his statement.

Thirdly, the plaintiff feels that she was not well represented by her counsel and an injustice will be occasioned to her unless the orders sought are allowed.

Fourthly, the mistakes by an advocate should not be visited on a litigant.

For these and other reasons, she prays that the motion be allowed.

3. The motion is opposed by the second defendant whose counsel has filed ten (10) grounds of opposition dated 11th September 2023, which can be summarized as follows.

Firstly, the motion dated 18/5/2023 is misconceived, incompetent, bad in law and an abuse of court process because it is not based on facts because contrary to the deposition by the plaintiff that her counsel did not cross examine the second defendant on 24/4/2023, she actually did cross-examine the second defendant as the record will show.

Secondly, the plaintiff cannot dictate to the defendants as to how they will conduct their case.

Thirdly, the plaintiff has not been able to demonstrate how the evidence of the second defendant has prejudiced her.

4. I have carefully considered the motion in its entirety including the grounds, the affidavit and the grounds of opposition. I have also perused the record which I personally compiled and I find that the motion has no merit for the following reasons.

Firstly, there is no truth whatsoever in saying that the plaintiff's counsel did not cross examine the second defendant. The record shows that she answered at least eight (8) questions about following the law in purchasing the land, the statutory declaration to the effect that the plaintiff was not married to the first defendant and others.

Secondly, the second defendant testified in Kiswahili and the issue of whether she was literate or not did not arise in the proceedings or if it did, it was immaterial because she was competent to testify under Section 125 of the Evidence Act.

Thirdly, the plaintiff, having testified and closed her case 15/11/2021 had nothing else to do but wait for the defendants to conduct their defence in the best way they knew how including failing to come to court at all like the first defendant did. The court cannot compel any party to testify in their case. Each party in a case has the right to remain silent.

Finally, the plaintiff has not demonstrated what prejudice she has suffered as a result of the non attendance of the first defendant. His absence should be to her advantage and not prejudice.

For the above stated reasons, I dismiss the motion dated 18/5/2023. Costs in the cause.

It is so ordered.



DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 14TH DAY OF MARCH 2024.

M.N. GICHERU

JUDGE

