



**Mburu & 6 others v Zucchini Holdings Limited & 2 others (Environment & Land Case 91 of 2010) [2024] KEELC 1347 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1347 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 91 OF 2010  
LN MBUGUA, J  
MARCH 12, 2024**

**BETWEEN**

**FRANCIS NGUGI MBURU ..... 1<sup>ST</sup> PLAINTIFF  
NYAMWEYA IRIES ABUYA ..... 2<sup>ND</sup> PLAINTIFF  
JULIUS MWANIKI WAITITU ..... 3<sup>RD</sup> PLAINTIFF  
DOMESTIC MUINDI MBURU ..... 4<sup>TH</sup> PLAINTIFF  
ESTHER WANGUI KAMAU ..... 5<sup>TH</sup> PLAINTIFF  
SILAS ONDICHO MANU ..... 6<sup>TH</sup> PLAINTIFF  
GEOFFREY MWAURA KAIGAI ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**ZUCCHINI HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT  
MINTO TRAVELS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
NERIFA HOLDINGS LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The 7<sup>th</sup> plaintiff is acting in person. He gave his evidence in chief on 1.2.2024. Mr. Omaiyo for the rest of the plaintiffs then embarked on cross examining the said party when defence counsel raised an objection averring that plaintiff's counsel prepared all the documents; hence in essence, 7<sup>th</sup> plaintiff is their client. Thus Mr. Omaiyo should not proceed to cross-examine the 7<sup>th</sup> plaintiff.
2. In opposition, Mr. Omaiyo stated that he is in a different firm of advocate from the one which prepared the pleadings and statements of the plaintiffs including the 7<sup>th</sup> plaintiff.



3. It is the finding of this court that even if the plaintiffs evidence is similar, Mr. Omaiyo is entitled to cross examine the witness (7<sup>th</sup> plaintiff) who is no longer his client. After all, the court even has discretion to allow cross examination of one's own witness; See Section 161 of the *Evidence Act*. The adverse party (read Mr Munge's clients) will have an opportunity to put forth questions to 7<sup>th</sup> plaintiff to test the veracity, credibility and accuracy of his evidence. It would have been a different scenario if Mr. Munge had commenced cross examination before Mr. Omaiyo.
4. In the circumstances the objection raised by Mr. Munge is hereby dismissed with a rider that Mr. Omaiyo will not ask leading questions to the 7<sup>th</sup> plaintiff.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Omaiyo for Plaintiff and Decree Holder 7<sup>th</sup> Plaintiff

Opole holding brief for Munge for 3<sup>rd</sup> Defendant

Court assistant: Judith

