



**Grimaldi v Itakey Investments Limited & another (Environment & Land  
Case 154 of 2017) [2024] KEELC 4036 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4036 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 154 OF 2017  
FM NJOROGE, J  
MAY 20, 2024**

**BETWEEN**

**ANTONELLA GRIMALDI ..... PLAINTIFF**

**AND**

**ITAKEY INVESTMENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GIMALOWI COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant’s notice of motion application dated 1<sup>st</sup> March 2024 seeks the following orders: -
  - a. That the 1<sup>st</sup> Defendant be granted leave to call Mr. Kiarie Kariuki as an expert witness in this matter.
  - b. That necessary directions be made.
  - c. That the costs of this application be in the cause.
2. This application was premised on the grounds outlined on the face of it and supported by the affidavit sworn by Antonella Braccini on 1<sup>st</sup> March 2024 who deposed that the determination of the real controversy in this case depends on the interpretation of a private deed of agreement dated 29<sup>th</sup> September 2013 between and 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein and a court order issued on 30<sup>th</sup> April 2014 in Mombasa High Court Commercial Case No. 135 of 2013 (OS), between the Defendants herein as the Plaintiffs and Kenya Commercial Bank as the defendant therein ( herein after referred to as “the Mombasa case”); that the intended expert witness, Mr. Kiarie Kariuki was the advocate representing the Defendants herein in the Mombasa case and that he drafted the said private deed agreement.
3. According to Antonella, the 1<sup>st</sup> Defendant’s advocates inadvertently forgot to include Mr. Kiarie Kariuki as a witness when they filed the 1<sup>st</sup> Defendant’s amended statement of defence.



4. When the application came up for directions on 7<sup>th</sup> March 2024, this court directed the Respondent to respond to the application within 7 days; and submissions be filed by the 1<sup>st</sup> Defendant/applicant and Respondent within 14 and 21 days respectively. These timelines were to run concurrently, meaning that the same has since lapsed. I have perused the court's records and I do not find any response or written submission filed by either party.
5. In the circumstances, the application dated 1/3/24 is hereby dismissed for want of compliance with court's directions.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 20<sup>TH</sup> DAY OF MAY 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

