



**Kioko v Charo (Environment & Land Case 27 of 2014)
[2024] KEELC 4139 (KLR) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4139 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 27 OF 2014
FM NJOROGE, J
MAY 14, 2024**

BETWEEN

REUBEN MULWA KIOKO PLAINTIFF

AND

JAPHET NOTI CHARO DEFENDANT

RULING

1. For determination is the notice of motion application dated February 6, 2024, filed by the Defendant/Applicant on the even date. The substantive order sought by the Defendant/Applicant is that he be allowed to testify through his duly appointed attorney one Samson Kmbitha Mwambire.
2. The application is premised on the grounds set out on the face of the motion and the supporting affidavit sworn by the applicant on February 6, 2024. This court understands the basis of the application to be that the applicant is illiterate thus will not be able to read out documents alluded to by both the Plaintiff/Respondent and himself. He annexed a copy of Power of Attorney donated to the said Samson Kmbitha Mwambire.

The application is unopposed.

3. On March 5, 2024, when the matter was mentioned for directions, the court directed applicant and the respondent to file written submissions within a specified time frame. The time frames given to parties to do so has since lapsed and none of them has complied. The outcome is that the application is dismissed for failure to comply with this court's directions.
4. In any event, and even assuming that the directions had been complied with, this court finds no compelling reason to allow the application on the basis that the claim that the Defendant/Applicant is illiterate is not a sufficient ground to warrant the orders sought. It is the applicant who knows his case well and it is his evidence that is dearly needed in this suit. He is alive and well. Save for the qualification that he is illiterate, he is under no disability that can sway this court into granting the orders sought.



This court notes that he has already partially given his evidence-in-chief and in the circumstances of this case there is no need to have a checquered body of evidence-in-chief given by two different persons. That would be an indelible stain in this court's record. Since the Defendant/AppLicant is well represented by a competent advocate and any interpretation needed can and will be procured at the hearing thereof I order that the applicant should testify in person.

5. The outcome is that the application dated February 6, 2024 is unmerited. It is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 14TH DAY OF MAY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

