



Mwananchi Credit Limited v Rioki & another (Environment & Land Case E001 of 2023) [2024] KEELC 4567 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4567 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E001 OF 2023**

JM KAMAU, J

MAY 9, 2024

BETWEEN

MWANANCHI CREDIT LIMITED PLAINTIFF

AND

CAROLINE NYAKERARIO RIOKI 1ST DEFENDANT

QMACS REALTORS LIMITED 2ND DEFENDANT

RULING

1. The Application dated 23/4/2024 seeks for the witness statement of one Sylvia Njoroge to be substituted with one of Sale Jackline on the ground that Sylvia Njoroge has since left the employment of the Plaintiff herein. The said Sylvia Njoroge is said to have been the head of the Plaintiff's legal department and that she cannot now testify on behalf of the Plaintiff.
2. Whereas I agree that it may be necessary to have another witness who works with the Plaintiff to testify on behalf of the institution, I do not agree with the intended witness, Saleh Jackline when she says that "...the said witness has recently left employment and therefore cannot testify on behalf of the plaintiff.....". A witness does not necessarily have to be an employee of the institution (party). The witness only needs to be acquainted with the facts of the case. Either of the two can testify because the documents in the custody of the party are intact and they speak volumes. The former employee is a better witness but there are circumstances that would make the party uncomfortable such as the reasons for the earlier employee leaving employment, how he was treated by his former employer, his relationship with the institution, how he left employment, and the time thereafter just to mention a few. He could also be unwilling to have anything to do with or even any memories of the past employment. Another reason could be the cost of bringing him to court or to the office to sign documents such as witness statement and/or Affidavit.



3. It might be that he is also not traceable. Any of these cases may be applicable in this case. However, what statement is Saleh Jackline coming to sign. The Defendant's Request for Interlocutory Judgment in terms of the counterclaim was granted on 6/2/2024. What remains in respect thereof is only formal proof. But the Plaintiff's case is yet to be heard. The Plaintiff is entitled to prosecute the main suit. Although the 1st Defendant's Counsel claims that the main suit was dismissed, I do not see any record to that effect. In the premises, I order that the intended witness, Ms. Saleh Jackline be substituted for Sylvia Wanjiru Njoroge as a witness and records another statement which will be limited to the main suit and the Defence thereto but then she should stay clear of the Counter Claim. These are the orders of the court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 9TH DAY OF MAY, 2024.

MUGO KAMAU

JUDGE

In the presence of: -

Court Assistant - Brenda

Counsel for the Plaintiff - Ms. Saleh

Counsel Mr. Mwita for the 1st Defendant

