



**Dodhia v Anmol Limited & another; Director of Physical Planning
& 2 others (Interested Parties) (Environment and Land Case Civil
Suit 245 of 2018) [2024] KEELC 5663 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5663 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 245 OF 2018**

**LN MBUGUA, J
JULY 25, 2024**

BETWEEN

DEEPAK HARAACHAND DODHIA PLAINTIFF

AND

ANMOL LIMITED 1ST DEFENDANT

SUPERFIT STEELCON LIMITED 2ND DEFENDANT

AND

DIRECTOR OF PHYSICAL PLANNING INTERESTED PARTY

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED
PARTY**

NATIONAL CONSTRUCTION AUTHORITY INTERESTED PARTY

RULING

1. This suit was slated for hearing on 2.7.2024. Even before counsel for the Plaintiff could call his witness to the stand, he objected to cross-examination of witnesses by counsels for the Interested Parties and urged the court to peruse their documents instead.
2. Counsel for the 1st Interested Party left the issue for the court’s determination, while the 2nd and 3rd Interested Parties’ counsels were unanimous that they would not cross-examine witnesses as long as their documents would be considered by the court.
3. Counsels on record for the 1st and 2nd Defendants were of the view that the Interested Parties should be allowed to cross –examine witnesses but since they had elected not to, then the court could not force them.



4. In rejoinder, counsel for the Plaintiff submitted that since the Interested Parties had filed issues of facts not law and had elected not to cross-examine witnesses, counsels for the Defendants could not speak for them.
5. The issue for determination is whether the Interested Parties should be allowed to cross-examine witnesses in the matter. I find that no prejudice would be suffered by the Interested Parties decision to refrain from cross examining witnesses. After all, the issues in the suit are between the main parties. See SCOK in *Francis Kariuki Muruatetu & Another v. Republic & 5 others*, Sup. Ct. Pet. 15 & 16 of 2015 (Consolidated); [2016] eKLR.
6. The Interested Parties have filed pleadings and documents which this court is being called upon to consider. The provisions of order 1 rule 10 (2) provides that;

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
7. How will the court effectually and completely adjudicate on the dispute if some parties are not given an opportunity to tender and challenge evidence in the platform of cross examination, yet they have apparently filed pleadings?. How will the court interrogate those pleadings if the interested parties don't participate in the suit.
8. Pursuant to the provisions of section 144 of the *Evidence Act*, it is this court which has the mandate to regulate the admissibility of the evidence. That being the case, the court shall not allow any hurdles to be placed in the quest to arrive at a just conclusion.
9. The end result is that the objection raised by the plaintiff's counsel is overruled. The Interested Parties are at liberty to cross examine the witnesses, but they can refrain from doing so on their own volition.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Shah for 1st Defendant

Aaron Kinyanjui for Plaintiff

Court assistant: Eddel

