



**Wirell v Chepkosgey (Environment & Land Case 110 of 2015)
[2024] KEELC 5301 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5301 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 110 OF 2015**

**EO OBAGA, J
JULY 18, 2024**

BETWEEN

NIL STAFFAN WIRELL PLAINTIFF

AND

EMILY CHEPKOSGEY DEFENDANT

RULING

1. When this case came up for further hearing of the Plaintiff’s case on 17.7.2024, Mr. Makokha for the Plaintiff indicated to the court that though he had lined up three more witnesses before closing the Plaintiff’s case, he had decided to drop two witnesses and was only going to call Mr. Kibii Advocate from the firm of R. K. limo & Co. Advocates and close the Plaintiff’s case.
2. Mr. Yego for the defendant objected to the calling of Mr. Kibii as a witness arguing that Mr. Kibii was coming to give evidence in respect of a document authored by Justice R. K. Limo when he was an Advocate. He argued that there is no law forbidding a judge who was previously an Advocate from coming to testify in court.
3. Mr. Yego further submitted that what the Plaintiff was trying to do was to take the parties back to the process before the partial mediation settlement. He stated further that this court has stated in its previous rulings that the issue of contribution was settled through the partial mediation settlement which was adopted by the court. The only remaining issue for determination is on the amount of the property in contention.
4. I have gone through the proceedings in the file. The document which Mr. Kibii is coming to testify on was authored by Justice R. K. Limo. Justice Limo is available and he is the proper person to give evidence on the document which is said to have been drafted by him. It is therefore clear that no basis has been laid for Mr. Kibii who was Justice R. K. Limo’s partner to come and testify on a documents he did not author.



5. The document in issue is a memorandum of understanding which was allegedly signed by the parties to this suit in the presence of Robert K. Limo Advocate (Now a Judge of the High Court). As Judge Limo is available, if the Plaintiff wishes to give any evidence touching on the memorandum of understanding dated 28.9.2013, it is only Justice Limo who can adduce any evidence touching on it. The memorandum of understanding does not indicate whether it was drawn by the firm of R. K. Limo & Co. Advocates. The document was only witnessed by Robert K. Limo Advocate. There is therefore no basis upon which Mr. Kibii can come to give evidence on it on the ground that he was a partner of Justice Limo.
6. I therefore uphold the objection to Mr. Kibii testifying on the evidence touching on memorandum of understanding dated 28.9.2013. In any case the partial mediation settlement which was recorded has settled the issue of the proportion of contribution. What is only remaining is on the value of the property in contention.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF JULY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Makokha for plaintiff.

Mr. Yego for Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

18TH JULY, 2024

