



Wasuna & another v Njeru & 2 others (Environment & Land Case 783 of 2014) [2024] KEELC 13342 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 783 OF 2014
LN MBUGUA, J
NOVEMBER 22, 2024**

BETWEEN

FRANCIS ERIC WASUNA 1ST PLAINTIFF

RUTH WASUNA 2ND PLAINTIFF

AND

EUNICE NJERI NJERU 1ST DEFENDANT

WILSON MUTERU 2ND DEFENDANT

COUNTY GOVERNMENT OF NAIROBI 3RD DEFENDANT

RULING

1. Before me is the 1st defendant’s Notice of Motion Application dated 11.9.2024 seeking orders that the case be reopened for purposes of cross examination of the 1st plaintiff by the applicant. The application is premised on the grounds on the face of the application and the supporting affidavit of the applicant. She contends that her advocates Nyaanga Mugisha filed a Notice of change of Advocates and commenced preparation of the trial scheduled on 16.5.2024, but on perusal of the file, they found that plaintiff’s case was closed way back on 13.6.2023 in their absence. He contends that his previous advocates was seriously ill.
2. The application is opposed by the plaintiff find Grounds of Opposition dated 11.10.2024 where it is contended that failure by the 1st defendants counsel to attend court on 13.6.2023 was deliberate, thus plaintiff stands to be prejudiced if the case is re-opened.
3. I find that the 1st plaintiff testified on 13.6.2023 when plaintiffs case was closed. The 1st defendant did not cross examine the plaintiff as himself and his advocate were absent during the trial. The question now falling for determination is whether the case of the plaintiff should be re-opened to enable the applicant/1st defendant to cross examine the 1st plaintiff.



4. In the case of *Rajni Kant Nathoo v Edward Nthuli & 4 Others* [2020] eKLR, it was stated that;

“The court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion the court should ensure that such re-opening does not embarrass or prejudice the opposite party. In that regard re-opening of a case should not be allowed where it is intended to fill gaps in evidence.”

5. The records indicate that on 13.6.2023 when the matter was called out in the virtual platform, the then counsel for the 1st defendant sought to conduct the cross examination virtually as he was unwell. The court gave an order for the hearing to be conducted via a hybrid system whereby plaintiffs witnesses were to tender their evidence physically but were to be cross examined virtually, the court proceeded to schedule the hearing at 10 am. However, when the case commenced, there was no appearance for the 1st defendant.

6. No explanation has been proffered by the applicant as to why he was a no- show on the day of hearing. His advocate who appeared in court on subsequent defence hearing date on 18.7.2023 did not proffer any explanation as to why he never turned up on 13.6.2023 during the trial. Nevertheless, in view of the averments advanced by the applicant that their erstwhile advocate fell sick and did not update him, I will give him the benefit of doubts. After all, the court takes note that the 2nd defendant is apparently deceased, and substitution is yet to be conducted, so either way, the matter was not headed to finalization at this stage.

7. I therefore allow the application dated 11.9.2024 but with costs to the plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Amuga for Plaintiff

M/s Kale holding brief for Nyaanga for 1st Defendant

Court Assistant: Vena

