



**Intra Africa Assurance Company Limited v Onuong’a (Being Sued as the Administrator on Behalf of the Estate of Peter Okinyi Okeri - Deceased); Eccons Construction & Engineering (K) Ltd & 2 others (Interested Parties) (Environment & Land Case 181 of 2017) [2024] KEELC 13572 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13572 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 181 OF 2017**

**LN MBUGUA, J  
DECEMBER 5, 2024**

**BETWEEN**

**INTRA AFRICA ASSURANCE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**SUSAN MORAA ONUONG’A (BEING SUED AS THE ADMINISTRATOR ON BEHALF OF THE ESTATE OF PETER OKINYI OKERI - DECEASED) ..... DEFENDANT**

**AND**

**ECCONS CONSTRUCTION & ENGINEERING (K) LTD INTERESTED PARTY  
KIN HOLDINGS LIMITED ..... INTERESTED PARTY  
JOSEPH SIRO MOSIOMA ..... INTERESTED PARTY**

**RULING**

1. The hearing of this matter is at the defence hearing stage. While Mr. Nyambega, counsel for 1<sup>st</sup> defendant was re-examining his witness, DW1, an objection was raised by Mr. Thiga counsel for the plaintiff averring that re-examination follows what arises during cross examination. That he did not dwell on the letter of 17.7.2003 at page 33 of the defence bundle dated 1.3.2023 and that what counsel Nyambega is doing is to rehash his case. Mr. Thiga contends that the line of cross examination on matters not raised during cross-examination is not proper and should be disallowed.
2. In opposition, counsel Nyambega indicated that he referred to the said document in juxtaposition with the document at page 38 of their bundle to demonstrate how the letter of offer crystallized into a contract and how Mr. Musioma gave the letter of offer to Peter with the knowledge of the plaintiff.



Thus the document at page 33 is meant to connect Intra Africa to whatever Musioma did in selling the property to Peter.

3. Mr. Bundotich, counsel for the 1<sup>st</sup>-3<sup>rd</sup> interested parties supports the averments made by Mr. Nyambega, adding that the latter was within his right to re-examine on a document that counters the document for the adverse party.
4. In rejoinder, counsel for the plaintiff stated that his questions to the witness in respect of the offer letter at page 36-37 of the defence bundle dated 1.3.2023 related to interrogation between the defendant and Econ Construction, and nowhere was Intra Africa mentioned, adding that the witness was consistent that Intra Africa was not involved. Thus the bid by Mr. Nyambega to bring the letter of 17.7.2003 is meant to introduce a new aspect where the witness is being asked to change his evidence to the direction that what was done was on behalf of Intra Africa, yet this was not part of cross examination.
5. I have considered all the arguments advanced herein. DW1 has already taken to the witness stand where he has given his evidence in chief, has been cross examined and is in the process of being re-examined. The question for determination is whether he should be re-examined on issues relating to the letter at page 33 of the 1<sup>st</sup> defendants bundle dated 1.3.2023.
6. The provisions of Article 50 (1) of *the constitution* stipulate that

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
7. In the case of State vs. Kipchirchir Kurui [2022] eKLR, the court had this to say on what amounts to a fair trial albeit in a criminal case;

“In the Kenyan Jurisprudence, the right to fair trial is placed at a much higher pedestal and it includes the right by an accused person to challenge the evidence presented against him or her. The court being a custodian of the law, should however ensure the constitutional safeguards are upheld all the time and jealously protected so that the accused is accorded true investigations and fairness in compliance with the basic rule of law.”
8. The purpose of re-examination is to clarify issues raised during cross examination, See Mahui & Another v Gatei & 3 Others (Commercial Case 330 of 2008) [2024] KEHC 6635 (KLR) (Commercial & Admiralty) (24 May 2024) (Ruling) Neutral citation: [2024] KEHC 6635 (KLR) In the case at hand, the 1<sup>st</sup> defendant’s counsel is interrogating his witness on the document which was not made a subject of interrogation during the cross examination by the plaintiff and also advancing another line of defence connecting Intra Africa to the transactions.
9. I find that advancing another line of defence at re-examination not captured during cross examination stage will certainly prejudice the adverse party who will not have a chance to cross examine the witness again. Thus the line of cross examination undertaken by Mr. Nyambega flies against the principles of what amounts to a fair hearing. The objection raised by counsel for the plaintiff is therefore upheld.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>th</sup> DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:



Thiga for Plaintiffs

Mose Nyambega for Defendant

Bundotich for the Interested Party

Court Assistant: Vena

