



**Chelagatt v Nderi & 8 others (Environment & Land Case
187 of 2016) [2023] KEELC 16397 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 187 OF 2016
FM NJOROGE, J
MARCH 16, 2023**

BETWEEN

LOYCE JEROP CHELAGATT PLAINTIFF

AND

HERMAN MARINE NDERI & 8 OTHERS DEFENDANT

RULING

1. Mr Simiyu for the plaintiff has objected to the production by DW2 of a copy of a letter dated December 21, 2015. That letter appears on the face of it to be from the Ministry of Lands Headquarters and is signed by one Philip Obonyo on behalf of the Director of Land Adjudication and Settlement. It seems to confirm the 1st defendant's claim to plot No 637 which is the subject of the dispute between the plaintiff and the defendants herein. The 2nd – 8th defendants claim to have purchased the plot from the 1st defendant who claims to have been allocated plot by the Settlement Fund Trustees (S F T).
2. Earlier this morning, another letter dated December 18, 2015 was produced by PW2 as PExh.7A. That exhibit is also a letter from the same office and is signed by a different officer by the name of P K Waithaka for the Director. It seems on the face of it to confirm that plot No 637 used to be referred to as plot No 674 and that it was purchased from one Rachael Njoki Ndungu in 2013 by the plaintiff.
3. The two letters mentioned above being of diametrically opposed content it is no wonder then that Mr Simiyu's principal line of objection is that this court cannot have two letters from the same office each stating exactly the opposite of the other. The second ground of objection by Mr Simiyu is that while a Mr Thiongo was testifying as PW1 in this case he labeled the letter now intended to be produced to be a forgery. Mr Simiyu also alluded to some correspondence, which was not produced in evidence in this case, between himself and Philip Abonyo, in which he claimed that the purported author had denounced the letter as forgery.



4. Mr Gakinya was of the view that both letters should be freely tabled before court. While Mr Rotich, citing his absence at the sitting in which Mr Thiongo was said to have denounced the letter, left it to the court.
5. In response Ms Omwenyo stated that the letter had been copied to inter alia the 1st defendant from whom the 2nd to 8th defendants purchased the land. She also stated that for 8 years a copy of that letter had been in the plaintiff's hands and the plaintiff had not raised any demur to its production or caused it to be investigated as a forgery.
6. The copy of letter dated December 21, 2015 has become the subject of much controversy but two major things emerge in this attempt to produce it and the objection:
 1. The letter was copied to the seller of the land and there is all probability that he released or shared a copy thereof to or with the other defendants who were the purchasers;
 2. The letter has not been investigated and proved to be a forgery by any authorized office and especially the Criminal Investigations Department yet it has been in the plaintiff's counsel's hands for 8 years plus.
7. I find these to be strong and self-explanatory grounds upon which to allow DW2 to produce the said letter.
8. Consequently, I overrule the objection and I allow DW2 to produce a copy of the said letter as 2DExh.8A. Hearing to proceed.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 16TH DAY OF MARCH 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

