



**Cat Enterprises Limited v General Hardware Limited (Commercial Case 138 of 2012)
[2023] KEHC 1191 (KLR) (Commercial and Tax) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 1191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 138 OF 2012
DO CHEPKWONY, J
JANUARY 25, 2023**

BETWEEN

CAT ENTERPRISES LIMITED PLAINTIFF

AND

GENERAL HARDWARE LIMITED DEFENDANT

RULING

1. When this matter came up for hearing of the main suit on October 25, 2022, a unique dispute arose when the defendant's Director Shaukatali Kaderbhai objected to Premji Vishram Patel, (who was to testify as PW1), testifying for the reason that he had impersonated his (witness) late Mr Premji Patel. Mr Shaukatali claimed that it is Mr Vishram Samji Kerai, also known as "Premji Patel" through whom the Defendant Company contracted the Plaintiff Company for the construction and building works at its premises situated at LR 209/2452. He stated that the witness impersonating Mr Vishram Samji Kerai also known as Mr Premji Patel, had not at any material time been the Plaintiff Company's Director and he attached a CR-12 to support this claim. His argument was that the impersonating witness is actually called Pravin V Patel and that he is a son to the late Premji Vishram Patel. Further, Shaukatali attached a Photostat copy of Pravin Patel's facebook seeking to persuade the court to reach a conclusion that the witness had indeed impersonated the late Premji Vishram Patel.
2. On the other hand, the witness filed an affidavit in response to the Shaukatali's affidavit. The same is dated November 28, 2022 and is in the name of Premji Vishram Patel. According to the witness, his National Identification Card states that his full name is Premji Vishram Patel and he has always interchangeably used the name alongside the names "Premji Patel" and "Pravin Patel". He clarified that his late father was known as Vishram Ramji Kerai and not Premji Vishram Patel.



3. Having listened to the argument raised by both parties and or their counsel and read through the respective affidavits filed by the said parties as directed by the court, from the onset, I wish to state that as per the provisions of Section 107 of the Evidence Act;

1. “Whoever desires any court to give Judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”.

And Section 109 that provides:-

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”.

4. In the instant case, the Defendant Company’s Director, Mr Shaukakali, who has alleged that the witness has impersonated his late father, has or bears the burden of proving the said allegations as impersonation is a serious that is punishable as a crime under the Penal Code. Also, the standard of proof required of the said Director is obviously higher than that required in ordinary civil suits, which proof on a balance of probability. However, the said burden is not one beyond reasonable doubt.
5. It is note-worthy that the witness produced an identification card showing his full name as Premji Vishram Patel, which the Defendants Director believes is forged as his actual name ought to be Pravin Patel. Nonetheless, the Defendant’s Director has not produced any document to support his allegation that the witness has a different identification document referring him as “Pravin Patel”
6. In my view, the Government of Kenya issues identity documents to persons to serve as forms of identification so that a holder of an Identity Card in Kenya uses the name to prove his/her identity and or citizenship. Therefore, unless contrary evidence is availed to this court, to show that the person in an identity document is not the person identified as such in the Identity Card and or that the Identity Card has been revoked, then the Identity Card that remains conclusive evidence as to one’s identity.
7. In this case, the witness has produced an Identity Card No xxxxxxxx in the name of Premji Vishram Patel, which remains conclusive evidence as to his identity that without evidence to the contrary, the court cannot hold otherwise.
8. In the circumstances, the allegations on impersonation are not supported by any substantive evidence, hence the objection raised by the defendants be and is hereby dismissed.
9. The main suit shall proceed for hearing as confirmed pursuant to Order 11 of the Civil Procedure Rules.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF JANUARY, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Wambua counsel for Plaintiff

Mr. Nganga counsel for Defendant



