



**Gitau alias Njoki w/o Simon v Gitau & another (Environment & Land
Case E070 of 2021) [2023] KEELC 18466 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 18466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E070 OF 2021**

**J OMANGE, J
APRIL 20, 2023**

BETWEEN

SALOME NJOKI GITAU ALIAS NJOKI W/O SIMON PLAINTIFF

AND

MONICAH WANJIRU GITAU 1ST DEFENDANT

DISTRICT LAND REGISTRAR, NAIROBI 2ND DEFENDANT

RULING

1. Before me is the Notice of Motion dated October 13, 2022 in which the plaintiff prays for the following orders;
 1. That this honourable court directs the 2nd Defendant herein to produce, make discovery on oath, deliver and/or make available original and/or certified copies of various documents with regard to the matter in question in the suit, more particularly, all the documents particularized in the notice to produce dated 15th November 2021 and filed on November 16, 2021 which include:-
 - a. The green card in respect to Title No Dagoretti/Waithaka/1325 (the suit property).
 - b. The transfer document effecting the transfer of Title No.Dagoretti/Waithaka/1325 to the 1st defendant.
 - c. The Land Control Board application for consent in respect to the transfer of the suit property to the 1st defendant.
 - d. The Land Control Board consent thereof.
 - e. The receipt attesting to payment of stamp duty in respect of transfer of suit property to the 1st defendant.



2. That this honourable court directs the 2nd defendant to produce the stated documents.
3. That the 2nd defendant bears the costs of this application.
2. The application is based on the grounds that the plaintiff has been unable to secure any of the documents named above as they are in the custody of the 2nd DEFendant who has frozen any online searches and has failed to avail them to the plaintiff.
3. The plaintiff contends that the documents have crucial information that is necessary for the fair and just determination of the case.
4. The application is supported by the affidavit of George Mwangi Kamau advocate to the plaintiff who depones that the plaintiff had filed a Notice to Produce dated November 15, 2021 which was filed on November 16, 2021. He stated that the plaintiff had been unable to secure the documents due to the freezing of online inquiries.
5. The 1st defendant filed a replying affidavit objecting to the application. The 1st defendant contends that the plaintiff is not the owner of the property hence the application which is intended to be a witch hunt meant to delay the matter.
6. The plaintiffs advocate filed submissions in which he submitted that the documents and information sought are relevant and vital to the determination of the case. He referred the court to several authorities which I have duly considered.
7. Counsel for the 1st defendant submitted that the documents are public documents under various laws which were quoted in the submissions. Counsel submitted that the plaintiff has not followed the proper channels hence the application should not be allowed.
8. I have carefully considered the affidavits by both parties and the submissions together with the authorities cited. The issue before the court for determination is whether the application is merited.
9. It is not in dispute that the plaintiff had filed a notice to produce in line with section 68 of the [Evidence Act](#). Having filed a Notice to Produce the plaintiffs are entitled to summon the 2nd defendant to produce the documents as provided in section 69 of the [Evidence Act](#). It is noteworthy that the plaintiffs/ applicants averments about the inaccessibility of the online inquiries are uncontroverted in their entirety as the 2nd defendant did not file an affidavit or oppose the application.
10. The documents sought to be produced are relevant. It is in the interests of justice that all relevant material be placed before the court to enable it reach a just determination.
11. Consequently, I find that the application has merit and is allowed in the following terms
 - a. The 2nd defendant is to produce the following documents;
 - i. The green card in respect to Title No Dagoretti/Waithaka/1325 (the suit property).
 - ii. The transfer document effecting the transfer of Title No.Dagoretti/Waithaka/1325 to the 1st defendant.
 - iii. The Land Control Board application for consent in respect to the transfer of the suit property to the 1st defendant.
 - iv. The Land Control Board consent thereof.



- v. The receipt attesting to payment of stamp duty in respect of transfer of suit property to the 1st defendant.
- b. The documents are to be produced within 30 days of service of the order.
- b. Costs of the application are to abide the determination of the main suit.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF APRIL 2023.

Judy Omenge

JUDGE

In the presence of: -

Mr. Mwangi for plaintiff

Ms Pauhuba holding brief for Ms Muchira for Defendant

Steve - Court Assistant

