



REPUBLIC OF KENYA



**In re Estate of Roger Bryan Robson (Deceased) (Succession Cause
955 of 2013) [2022] KEHC 2960 (KLR) (Family) (27 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 2960 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 955 OF 2013

MA ODERO, J

MAY 27, 2022

IN THE MATTER OF THE ESTATE OF ROGER BRYAN ROBSON (DECEASED)

**IN THE MATTER OF
SPENCER ELMS (SUED AS THE PERSONAL REPRESENTATIVE AND
EXECUTOR TO THE ESTATE OF ROGER BRYAN ROBSON RESPONDENT**

RULING

1. The issue before this court is the Admissibility of the Forensic Report prepared by the late Mr Antipas Nyanjwa who passed away on April 2021. At the time when he prepared the Report the said Mr Nyanywa was a Forensic Examiner attached to the National Land Commission (hereafter 'NLC'). The witness currently on the stand Mr Japheth Oduor is giving evidence in respect of a peer Review report, which he conducted on the report prepared by the late Antipas Nyanjwa.
2. Counsel for the objectors have objected to the production of the NLC Report dated 2nd June 2017 on the grounds that the said report was withdrawn by the NLC in its entirety including the Forensic Report contained therein. Counsel refers the court to a letter dated 12th March 2017 by which the CEO of the NLC indicated to the Advocates for the Executors that the entire NLC Report had been withdrawn. It is alleged that the report was not prepared procedurally leading to its withdrawal.
3. Counsel for the Executors oppose the objection to the report. They submit that the witness who conducted the Peer Report is available for cross-examination by counsel for the Objectors regarding the content of his peer report. They rely on Section 33 of the *Evidence Act* which deals with the admissibility of reports (statements) prepared by a deceased person. It is submitted that the same report has been relied upon in other court cases. Counsel submits that the objection has no merit and urges the court to dismiss the same.
4. I have considered the oral submissions made by both sides. Firstly, the argument that the witness Mr Oduor is incompetent as he does not work for the NLC has no basis. The witness is being called to



present a peer review which he authored of a Forensic Report. To peer review a Document/Report one does not have to work in the same agency as the person who prepared the report. All that is required is that the reviewer have the necessary qualifications to render an opinion on the subject. There has been no challenge at all to the qualifications of Mr Oduor as a Forensic Expert.

5. The objectors have raised the issue that the entire report was withdrawn by the NLC. The witness is not here to comment on the NLC report. He is only here to comment on one aspect of the report being the Forensic Report prepared by Mr Antipas Nyanjwa. This was a report prepared by an expert who is now deceased. There is nothing to repudiate the report made by Mr Nyanjwa. Nobody has discredited the report and Mr Nyanjwa did not himself withdraw his report. There is in my view a distinction between the NLC Report and the Forensic Report prepared by the Document Examiner.
6. The NLC report was withdrawn because it was alleged that due process was not followed in the preparation of that report. However, there is nothing to show that the Forensic Expert failed to follow due process in the preparation of his own report.
7. I am in agreement with the Advocates for the Executors that the witness on the stand is available for cross-examination regarding the peer review which he prepared. I find no merit in this objection. The same is hereby dismissed and the witness is allowed to proceed with his evidence.

DATED IN NAIROBI THIS 27TH DAY OF MAY 2022.

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MAUREEN A. ODERO

JUDGE

