



Kamunya (Suing as the administrator of the Estate of Peter David Kamunya Kiboi (Deceased) v Gichuhi (Environment & Land Case 640 of 2015) [2023] KEELC 18275 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18275 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 640 OF 2015**

EK WABWOTO, J

JUNE 19, 2023

BETWEEN

SHELMITH W KAMUNYA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF PETER DAVID KAMUNYA KIBOI (DECEASED)) PLAINTIFF

AND

REV CHRISTOPHER GICHUHI DEFENDANT

RULING

1. On June 15, 2023 during the cross-examination of Shellmith Kamunya (PW3), the Defendant made an oral application to have the documents that were presented for examination by the Plaintiff be subjected to forensic examination. Learned Counsel Mr Nabutete appearing on behalf of the Defendant, stated that the said application is being made for the reasons that PW3 had admitted during her cross-examination that the said documents were different from the documents that had been initially served and availed to the Plaintiff. Learned Counsel argued that owing to that information, it was necessary that the court allows the Defendant's oral application.
2. Learned Counsel Mr Rono appearing for the Plaintiff vehemently opposed the said application. Counsel argued that the application was brought late in the day and further it was meant to derail the ongoing trial of the suit. It was also submitted that the Defendant was served with the said documents way back on November 20, 2021 at a time when he not filed his witness statements and if he had had any objection to the same, he ought to have raised it earlier. Counsel termed the application as an afterthought. He also stated that the document examiner Mr Kenga had since passed away and there was no way the Plaintiff would ever have any chance to have him back to this court.
3. I have considered the application together with the oral submissions made by Counsel on behalf of the parties herein. The court is being called upon to allow the Plaintiffs documents filed as the Plaintiff's further list and bundle dated November 19, 2021 be subjected to forensic analysis. The gist of the



Defendant's application is that the documents that were submitted for examination differ with specific reference to the documents that were availed to the Defendant yet they ought to have been similar in all aspects. The Defendant contended that the said analysis is necessary for the Defendant to have a fair trial and bring out the issues in dispute.

4. This court having considered the said application is of the view that by ordering a contested document to be subjected to examination does not amount to a court assisting a party to build up his case. The concern of the court is to allow each party an opportunity to fairly urge his case. Document examination is not foreign to civil proceedings. Document examiners have routinely been called to give evidence in Civil Proceedings and once a party shows that there are grounds for such an order, the court cannot hesitate to do so as that is one way of ensuring that justice is done to all parties in civil disputes. I have looked at the bundle being referred to as the Plaintiff's further list and bundle of documents dated November 19, 2021 and the documents that seek to be examined include the following; Mutation for Ngong/Ngong 3317, Sale agreement for Ngong/Ngong 3317, Land Transfer form for Ngong/Ngong 3317 and Title deed for Ngong/Ngong 3317.
5. The Plaintiff having separately availed the said documents for examination and further having conceded in cross-examination that indeed there were some differences in the said documents with what was served upon the Defendant cannot then reject the Defendant's request for such examination.
6. This court is satisfied that the Defendant has laid a basis to warrant the grant of the orders sought. I find merit in the Defendant's oral application made on June 15, 2023 and I allow the same in the following terms: -
 1. The documents appearing at the Plaintiff's further list and bundle of documents dated November 19, 2021 shall be subjected to forensic examination at the Defendant's costs.
 2. The examiner to file and serve the report within 60 days from today.
 3. This matter shall be mentioned on September 18, 2023 for further directions.

It is so ordered.

Dated, Signed and Delivered by email at Nairobi this 19th day of June 2023.

E K WABWOTO

JUDGE

