



**Sakayo v Registered Trustees of Africa Inland Church Riverside Wote
(Through the Trustee) Alex Ndetei & another (Environment & Land Case
E001 of 2024) [2025] KEELC 1398 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1398 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E001 OF 2024
EO OBAGA, J
MARCH 20, 2025**

BETWEEN

ESTHER MBEKE SAKAYO PLAINTIFF

AND

**THE REGISTERED TRUSTEES OF AFRICA INLAND CHURCH RIVERSIDE
WOTE (THROUGH THE TRUSTEE) ALEX NDETEI 1ST DEFENDANT
DISTRICT LAND REGISTRAR MAKUENI 2ND DEFENDANT**

RULING

1. This is a ruling in respect of a Notice of Motion dated 2nd September, 2024 in which the 1st Defendant/Applicant is seeking the following orders;
 - i. That the Honourable court be pleased to issue orders to the Plaintiff to produce the original copy of agreement of sale dated 6th April, 2019.
 - ii. That this honourable court be pleased to issue orders for submission of the said original agreement together with versions of copies of the same tendered in evidence by the Plaintiff and the 1st Defendant respectively to the chief government document examiner for forensic analysis for determination as to whether the original agreement has been altered and for forged, and which of the two versions of the same agreement is genuine.
 - iii. That this Honourable court be pleased to issue directions for expunging of the false and/or fraudulently altered version of the agreement dated 6th April, 2019, and for penal action as against the makers of the forged version.
 - iv. That this honourable court be pleased to issue orders as to costs of this application premised on the outcome of the document examiners report.



- v. That this honourable court be pleased to issue such orders as may be fair, expedient and just for the expeditious disposal of the suit herein.
2. The Applicant contends that that during the lifetime of Sakayo Mutungi Mathuva who is deceased husband of the Plaintiff donated the entire parcel No. Makueni/Unoa/1740 to the Applicant. In the process of transfer of the donated land, the Applicant and the Plaintiff/Respondent entered into an agreement dated 6th April, 2019 whereby the Applicant was given the title deed for the suit property.
 3. When this suit was filed by the Respondent, she filed a copy of the agreement of 6th April, 2019 which had been altered. The Applicant also annexed a copy of the same agreement of 6th April, 2019 which had no alteration on the size of the plot. It is on this basis that the Applicant is seeking that the original as well as the copies presented to court be availed for examination by a document examiner to ascertain whether there was alteration of either of the agreements.
 4. The Plaintiff/Respondent opposed the Applicant's application based on a replying affidavit sworn on 7th October, 2024. The Respondent contends that the Applicant's application is made in bad faith and is only meant to delay the finalization of this case.
 5. She states that each party has her/its own version of the original of the agreement which will be presented to court during the hearing. The Respondent further states that the Applicant has not annexed the two versions of the agreement to the application for the court to make a determination whether there is need to refer the two for forensic examination.
 6. The Respondent further states that the Applicant is making a claim of forgery and is seeking the court to help it investigate the alleged forgery which has never been reported to any investigative agencies. The Respondent states that what was gifted is a plot measuring 50x100 ft and not the 100x100 ft which the Applicant is claiming.
 7. The Applicant filed a further affidavit which does not show the date it was sworn but still there was no annexure of the two disputed documents which form the subject of this application. The Applicant instead states that the gift was on the basis of land measuring 0.097 hectares and that this is what the Respondent sought to transfer during the land control board application for consent. The Applicant accuses the Respondent of being greedy and demanding money for an otherwise free donation by her deceased husband.
 8. The parties were directed to file written submissions. The Applicant filed submissions dated 18th December, 2024. The Respondent filed submissions dated 9th January, 2025. I have carefully considered the Applicant's application, the opposition to the same by the Respondent the submissions of the parties as well as the authorities cited. The only issue for determination is whether the Applicant has made a case for the court to order the forensic examination of the disputed documents.
 9. To begin with, the two dispute documents were not annexed to the application. Even after the issue was raised in the replying affidavit and the Applicant filed a further affidavit, the said disputed versions of the documents were never annexed. There is therefore no basis upon which this court can make a decision on whether there is need to subject the said documents for examination.
 10. This court is being asked to order submission of documents for examination and make certain orders consequent to the finding of the examination report. I do not think this is a role which this court ought to play. The court is being asked to help the Applicant build its case which is not the role of a court in a civil suit.



11. In the case of Bakari Juma Diwani & 296 others -vs- Charity Wangui Mwangi (2020) eKLR, the court stated as follows:

“Evidently, this is not a criminal court and pretrial discovery and gathering of evidence must be managed by the parties. The Applicant has doubts as to the authenticity of the authority to appear, Act and plead and the Respondent’s identity card number. The Applicant is entitled to do so. However, in expressing her doubts over the authenticity of the said documents the Applicant cannot be allowed to turn the court into an investigative agency. By ordering forensic examination of the disputed documents the court will, in my view be descending into the parties arena of availing evidence in support of their respective cases. In my view, parties must be left to present evidence in support of their respective cases.”

12. In the case of Ngatari -vs- Njue & another (2022) eKLR the mandate of court in civil cases was stated thus:

“The only instance where this court can assist the parties in determination of their disputes is by way of issuing summons to witness where it is requested by any of the parties. Compelling an entity to prepare investigative report in a civil suit flies against its mandate as an impartial umpire.”

13. If and when the evidence of the alleged alteration is placed before the court, the court can make a determination whether there was alteration by white out or not. I do not think the court requires a document examiners report to confirm an alteration of a document. If it was a signature forged, then this will be another thing all together.

14. From the above analysis, I find that the Applicant’s application lacks merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF MARCH, 2025.

In the presence of:

Ms. Okinyi for Mr. Kivindyo for the 1st Defendant/Applicant.

Mr. Aduendo for Mr. Muthiani for Plaintiff/Respondnet.

Court assistant - Steve Musyoki

