

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 567 OF 2009

ANN WANJIKU KAMAU.....PLAINTIFF

VERSUS

OGUTU JOSEPH..... DEFENDANT

RULING

- 1) On 19th September 2018, Ann Wanjiku Kamau, the plaintiff herein, sought to produce in evidence as an exhibit her letter of employment dated 27.9.2007. Mrs. Githae, the learned advocate for the defendant raised an objection arguing that she needed the author of the letter to attend court for purposes of cross-examination. This court proceeded to have the document marked for identification as PM.F.I. 7.
- 2) It is the submission of Miss Biage, learned advocate for the plaintiff that the authors of the letter namely: **Tiikka Torppa and Alex Saelaert** being expatriates have since then left Kenya, therefore, it would be extremely difficult and expensive to secure their attendance in court. The learned advocate further pointed out that the plaintiff was the recipient of the aforesaid letter and was therefore entitled to produce it under the provisions of the Evidence Act.
- 3) Mrs. Githae, is of the submission that it is important for the plaintiff to summon the authors of the aforesaid letter so that the defendant can cross-examine them to establish whether they employed the plaintiff as an expatriate nanny. The learned advocate further pointed out that the disputed letter does not show who authored the letter nor does it show that the plaintiff was hired as an expatriate nanny.
- 4) Having considered the rival submissions, it is apparent prima facie that the letter dated 27.9.2007 was authored by Tiikka Torppa and Alex Saelaert. The same is addressed to the plaintiff and is signed. There is no allegation that the same is a forgery. It is also not in dispute that the authors of the aforesaid letter have left the jurisdiction of this court.
- 5) It is further not contested that it would be extremely difficult to secure the attendance in court of the aforesaid authors. Under the Evidence Act (Cap. 80 Laws of Kenya,) the plaintiff being the recipient of the letter is entitled to adduce the document in evidence. Consequently, I overrule the defendant's objection and proceed to direct that the document should be produced as an exhibit in evidence marked PExh. 7.
- 6) Costs of the objection to abide the outcome of this suit.

Dated, signed and delivered at Nairobi this 14th day of March, 2019.

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J K SERGON

JUDGE

In The presence of

..... for the Plaintiff

..... for the Defendant