



REPUBLIC OF KENYA



**KENYA LAW**  
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**Farah & another v Adan & another (Environment & Land Case  
E229 of 2022) [2023] KEELC 20931 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20931 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E229 OF 2022  
LN MBUGUA, J  
OCTOBER 23, 2023**

**BETWEEN**

**HUSSEIN AHMED FARAH ..... 1<sup>ST</sup> PLAINTIFF**

**HUSSEIN UNSHUR MOHAMMED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**YUSUF ABDI ADAN ..... 1<sup>ST</sup> DEFENDANT**

**MOHAMMED ABDIKADIR ADAN ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. For the 2<sup>nd</sup> time, this court is delivering an instant ruling midstream of the trial. The same is in respect of objection raised by Mr. Lorot regarding the production of some documents by the PW1, particularly item no 6 which is apparently electronic evidence, as well as item no. 7, the copy of indenture. He avers that this is secondary evidence and there was no notice to produce.
2. In opposition to the application, Mr. Sagana for the plaintiff avers that the title which is being contested is the same one that the 1<sup>st</sup> defendant has in case no.156 of 2021. Adding that this again is a pretrial issue, and is now late for the opponent to start raising objections. He avers that the objection makes a mockery of pretrial directions.
3. I have considered the arguments raised herein. I will again make reference to the Practice Directions of 25.7.2014 gazette notice no. 5178 which states that pretrial directions should be taken seriously as



this is a vital stage of the proceedings. The provisions of section 28 (g) thereof stipulate that one of the directions to be undertaken during pretrial exercise is;

“g) Taking of all objections to the production of specific documents, where notice has been issued to the other party, thereafter, objections on the production of any document shall not be entertained at the main hearing.”

4. In the case of Virginia Kathambi, Maingi v Nicholas Mwatika & 2 others [2023] eKLR the court had this to say in a similar situation;

“The 1<sup>st</sup> defendant’s counsel having failed to raise her objections on the production of the Plaintiff’s exhibits numbers 15,16,17,18, during the pretrial conference is estopped from raising the objections at the hearing of this suit. Her argument that disallowing her objections will amount to sacrificing justice at the alter of expediency does not arise; because the provisions of the Constitution, the *Environment and Land Court Act*, the *Civil Procedure Act* and the rules thereunder together with this court’s Practice Directions have inbuilt mechanisms to ensure justice, fairness, expediency, affordability and proportionality are achieved all in one package.”

5. Similarly, this is not a situation where the 1<sup>st</sup> defendant is being denied an opportunity to raise objections on production of documents, rather, it is a situation where he failed to seize the moment during the vital stage for Pretrial Directions. The court declines to entertain any applications relating to production of documents during the main hearing.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Sagana and Birif for Plaintiff

Mr. Lorot and Tirop for 1<sup>st</sup> Defendant

Muriithi for 2<sup>nd</sup> Defendant

Court Assistant: Eddel

