



**Moonglow Assets Limited v Commissioner of Lands & 4 others (Environment & Land Case 215 of 2018) [2023] KEELC 22062 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22062 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 215 OF 2018  
A NYUKURI, J  
NOVEMBER 30, 2023**

**BETWEEN**

**MOONGLOW ASSETS LIMITED ..... PLAINTIFF**

**AND**

**THE COMMISSIONER OF LANDS ..... 1<sup>ST</sup> DEFENDANT**

**THE REGISTRAR OF TITLES ..... 2<sup>ND</sup> DEFENDANT**

**THE DIRECTOR OF SURVEYS ..... 3<sup>RD</sup> DEFENDANT**

**HEKIMA LAND SURVEYS ..... 4<sup>TH</sup> DEFENDANT**

**SHAMJI KALYAN PINDORIA LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. On 31<sup>st</sup> May 2023, this matter came up for pretrial directions whereof the parties indicated their intention to object to documents filed. Therefore, the court directed parties to file and serve their respective submissions in respect of the documents they each objected to. Therefore, this ruling is in respect to objections raised by parties, against the production of some of the documents filed.
2. The plaintiff filed objections and submissions objecting to the production of 19 documents filed by the 5<sup>th</sup> defendant. On the other hand, the 5<sup>th</sup> defendant in their submissions, objected to the production of 17 documents filed by the plaintiff and responded to the plaintiff's objections, while the Attorney General acting for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants responded to the objections raised by the plaintiff and the 5<sup>th</sup> defendant. The other defendants did not raise any objections or file any submissions addressing the matter herein.



## Plaintiff's Objections and Submissions

3. In their submissions, the plaintiff objected to 19 documents filed by the 5<sup>th</sup> defendant, namely bankers' cheque on pages 8 and 9; letter dated 15<sup>th</sup> April 2010 by the Commissioner of lands; letter dated 3<sup>rd</sup> July 2012 authored by B.M. Okumu licensed surveyor; letters dated 17<sup>th</sup> May 2012, 26<sup>th</sup> October 2012 and 2<sup>nd</sup> November 2011 by Commissioner of lands; application for registration; transactions by account-work in progress; letters dated 20<sup>th</sup> December 2018, 15<sup>th</sup> May 2012, and 3<sup>rd</sup> September 2012 by Chief Land Registrar; valuation report from Circuit Valuers and Management Consultants dated 8<sup>th</sup> May 2019; letter dated 29<sup>th</sup> May 2012 signed for Assistant Technical Coordination Manager; letter dated 9<sup>th</sup> August 2012 by the County Director of Environment; letter dated 25<sup>th</sup> July 2012 by the District Physical Planning Officer; surveyor's report signed by Stephen O. Ambani dated 10<sup>th</sup> November 2012; and beacon certificate signed by Stephen O. Ambani.
4. The basis for the plaintiff's objection is that the 5<sup>th</sup> defendant's only witness one Viyesh Vijay Patel is not the maker of the said documents and that the authenticity of those documents is challenged. Counsel further argued that letters alleged to have been written by the 1<sup>st</sup> respondent, were signed on behalf of the office holder. It was further submitted for the plaintiff that expert reports can only be produced by authors thereof and that the 5<sup>th</sup> defendant is not such expert.
5. Reliance was placed on section 35 (1) of the *Evidence Act*, to argue that where there is no evidence that a maker of a document is dead, cannot be found or is incapable of giving evidence or that their attendance cannot be procured without delay or expense, the maker of the document is the one who ought to produce such document. To buttress their argument, counsel referred to the case of *Joao Francis Quadros v SDV Transami Kenya Ltd* [2005] eKLR.

## 5<sup>th</sup> Defendant's objections and submissions

6. In response to the objections raised by the plaintiff, the 5<sup>th</sup> defendant through their counsel stated that they had filed two witness statements dated 10<sup>th</sup> July 2014 at pages 325 to 339 of their bundle of documents as well as pages 236 and 242. They submitted that the documents produced by the 5<sup>th</sup> defendant are either-
  - i. Made by the 5<sup>th</sup> defendant.
  - ii. Prepared by professionals engaged by the 5<sup>th</sup> defendant.
  - iii. Addressed to the 5<sup>th</sup> defendant.
  - iv. Copied to the 5<sup>th</sup> defendant.
  - v. Availed to the 5<sup>th</sup> defendant in the course of engagements with public offices details of which are provided.
  - vi. Form part of public records that are ordinary available to members of the public.
  - vii. Are otherwise relevant to the matters in issue and concern matters that are not in contest or which have otherwise been proved or admitted.
7. It was further submitted that the Bankers cheque at pages 8 & 9 relate to the allotment letter at page 3 of the bundle and that the witness at paragraph 3 of the statement of 10<sup>th</sup> July 2013 clearly narrated how the 5<sup>th</sup> defendant paid the stand premium for the allotment. It was their submission that at page 7 is the 5<sup>th</sup> defendant's letter dated 10<sup>th</sup> November 2009 forwarding the 4 cheques whose numbers correspond



to the copies provided to the commissioner of lands. Counsel argued that a copy of the receipt from the Commissioner of Lands issued to the 5<sup>th</sup> defendant and referencing the said cheques is produced at page 10 of the documents. He opined that it was clear that the cheques were forwarded by the 5<sup>th</sup> defendant to the commissioner of lands in payment of stand premium prescribed in the allotment letter and that the 5<sup>th</sup> defendant was in proper custody of the copies of the unbanked cheques and is competent and the right party to produce them further that the objection is misplaced.

8. They argued that the 5<sup>th</sup> defendant is the addressee of the letter at page 12 of the bundle and thus competent to produce its copy. They stated that Boma surveys is the surveyor engaged by the 5<sup>th</sup> defendant and the letter dated 3<sup>rd</sup> July 2012 at page 18 lawfully came to the 5<sup>th</sup> defendant's custody and they are competent to produce the same. For the letter dated 17<sup>th</sup> May 2012 at Page 21, it was stated that the same is copied to the 5<sup>th</sup> defendant hence they have proper possession of the same and can produce it as such.
9. Further, it was submitted that the letter dated 26<sup>th</sup> October 2012 at page 22 of their bundle is copied to the 5<sup>th</sup> defendant and its surveyor B.M Okumu and that 5<sup>th</sup> defendant has proper custody of the same and is concerned with its content and hence competent to produce it. It was also submitted that the letter dated 2<sup>nd</sup> November 2011 at page 23 of the 5<sup>th</sup> defendant's bundle is copied to the 5<sup>th</sup> defendant and as the recipient is in proper custody thereof they can produce a copy.
10. Counsel contended that the letter dated 16<sup>th</sup> November 2012 at page 24 of the 5<sup>th</sup> defendant's bundle is addressed to the 5<sup>th</sup> defendant who has proper custody of it hence competent to produce a copy thereof. On the application for registration, it was submitted that the same was a copy issued to the customer on booking registration and the 5<sup>th</sup> defendant's witness is competent to produce it. For the document at page 38 to 120, it was submitted that the same is the 5<sup>th</sup> defendant's own record of expenses incurred on its construction works on the suit property and that the 5<sup>th</sup> defendant is the only person who can produce it as the maker and custodian of the record.
11. It was argued that the 5<sup>th</sup> defendant shall lead evidence to lay the basis for the production of the letter at page 122 of its bundle and a determination on its production should await the hearing. It was their submission that the said letter refers to the letter appearing at page 304 which is copied to the 5<sup>th</sup> defendant and is further written by an officer who is listed as a witness by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
12. The 5<sup>th</sup> defendant conceded to the objection to production of the valuation of report at pages 124 and 139 of its bundle of document and undertook to call the valuer to produce the same. For the letter dated 15<sup>th</sup> May 2012 at page 259, it was submitted that the same is addressed to the 5<sup>th</sup> defendant as a response to their letter dated 3<sup>rd</sup> April 2012 and that they have proper custody of it and are competent to produce it. In regard to the letter at page 272 dated 29<sup>th</sup> May 2012, it was submitted that the director of the 5<sup>th</sup> defendant is a proper witness to produce it.
13. On the permit at pages 273 and 276, it was submitted that the same was issued to the 5<sup>th</sup> defendant and that it is attached to the letter at page 272 addressed to the Company, hence the 5<sup>th</sup> defendant's witness is competent to produce the same. On the NEMA approval at pages 277 and 279 dated 9<sup>th</sup> August 2012, counsel submitted that the same is addressed to the 5<sup>th</sup> defendant and that a clearer copy will be provided. It was argued that since it has lawful custody of the same, the 5<sup>th</sup> defendant is competent to produce it, similarly to the letter dated 25<sup>th</sup> July 2012. As regards the surveyor's report and beacon certificate at pages 286 & 287 of its bundle, it was stated that the same was issued to the 5<sup>th</sup> defendant's witness and it bears his signature at page 287 as Jayesh Patel hence the 5<sup>th</sup> defendant is competent to produce the same.



14. Counsel submitted that the letter dated 3<sup>rd</sup> September 2012 at page 304 of the 5<sup>th</sup> defendant's bundle, was authored by the Chief Land Registrar to the Director of Surveys and is copied to the 5<sup>th</sup> defendant which has lawful custody of it and thus competent to produce it.

#### **5<sup>th</sup> defendant's objections and submissions in regard to the Plaintiff's documents**

15. Counsel submitted that the objections to the plaintiff's documents were premised on sections 35, 65, 67, 68, 69 and 79 of the *Evidence Act*. Counsel for the 5<sup>th</sup> defendant objected to production of some documents filed by the plaintiff and challenged the same as being inadmissible. They objected to production of the cheque at page 21 of the plaintiff's bundle on the basis that it was not shown how the plaintiff and their witness obtained it and the witness is not the maker or recipient of the cheque. It was their argument that the letter at page 26 between Hekima Land Surveyors and Director of surveys was private communication and not copied to the plaintiff. A similar objection was raised in regard to the letters and documents at pages 29, 35, 36, 37 and 38, the latter being an official internal memo between the chairman National Land Commission and Chief Land Registrar and was neither made by addressed to nor copied to the plaintiff and that hence they cannot account for its possession, thereof the witness is not competent to produce it.
16. As for the letter dated 7<sup>th</sup> August 2003 at pages 46 to 47 of the Plaintiff's bundle, it was submitted that the same was private correspondence between the Managing Trustee of N.S.S.F and the Commissioner of Lands, neither made by, addressed to, or copied to the plaintiff hence it is not demonstrated how they obtained it, neither can the witness authenticate it.
17. As for the documents at pages 50 to 51 of the bundle, it was submitted that the same is an undated and unsigned document which cannot be authenticated. That it purports to be a letter between Mutula Kilonzo & Company Advocates and a Mr. Henry Kilonza Wambua hence it cannot be produced by the plaintiff nor authenticate as a genuine document since it is not shown how he obtained it. Concerning the document at page 52 of the plaintiff's bundle being a copy of a beacon certificate between Hekima Land Surveyors Limited and Mr. S.M Wangondo, it was objected to on the basis that the same was neither made by, copied to or addressed to the plaintiff and that neither can they authenticate it. As for the letter dated 4<sup>th</sup> June 2012 addressed to the 5<sup>th</sup> defendant by a Mr. R.M. Murugu for Director of Surveys at page 53 of the bundle, it was argued that the same is neither executed or attested and its authenticity is dubious and that the plaintiff could not produce it since it was not addressed or copied to them.
18. Counsel objected to the letter dated 17<sup>th</sup> August 2012 purporting to be addressed to the 5<sup>th</sup> defendant and it was submitted that the document is not certified, neither is it copied to the plaintiff, nor is it demonstrated where it was obtained from hence they cannot produce it. As for the internal Memo dated 31.12.2012 between the Director of Surveyors and Chief Final Checkers Land Surveyors Division, at page 55 of the plaintiff's bundle, it was submitted that the document is not certified as authenticated neither is it made by, addressed to or copied to the plaintiff, hence they are not competent to produce it.
19. It was further submitted for the 5<sup>th</sup> defendant that the Memo dated 9<sup>th</sup> July 2012 between the Head of Land Administration and Chairman National Land Commission at page 60 of the bundle, is not certified for authenticity, neither is it made by, addressed to, or copied to the plaintiff hence they are not competent to produce it. As regards the internal memos dated 5<sup>th</sup> December 2013 at page 62 between Director Legal Affairs enforcement and Secretary Lands, the one dated 23<sup>rd</sup> August 2013 by A.G. Director of surveys to Chairman National Lands Commission Page 64, and the one dated 30<sup>th</sup> September 2013 from Commissioner Abdulkadir Khalif to Chairman National Land Commission



page 68 & 69 it was submitted that the documents are not certified, for authenticity neither are they addressed to, copied to or made by the plaintiff's witness hence they could not produce the same.

20. For the letter dated 23<sup>rd</sup> September 2013 pg 65 from the Chairman National Land Commission to Director of Surveys, and the letter dated 26<sup>th</sup> September 2013 from the National Land Commission to Shamji Kalyan Pindoria Limited Page 66-67, the 5<sup>th</sup> defendant challenged their production on the same grounds of not being addressed to or copied to the without explanation as to how the plaintiff obtained them.
21. Finally, on the letter dated 6<sup>th</sup> February 2014 page 77 by the director of Surveys to Directorate of C.I.D, it was submitted that the said letter is not certified for authentication nor is it addressed to or copied to the plaintiff, hence they could not produce it.

### **Submissions by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants**

22. The Attorney General also filed submissions in response to the production of documents by the plaintiff and the 5<sup>th</sup> defendant. They relied on the Supreme Court's decision in Petition No.13 Of 2020 as consolidated with Petition No. 18 of (E019) between *Kenya Railways Corporation & 2 Others vs Okiya Omtatah Okoiti and 3 Others*, and submitted that Section 81 of the Evidence Act Cap 80 Laws of Kenya requires that production of public documents, ought to be original or certified copies. They further submitted that documents which have been improperly obtained cannot be admitted as evidence in court.
23. It was further submitted that the documents objected to in the plaintiff's bundle consists of public documents and a basis had not been laid for the production of the same within the procedure established under the Access to Information Act. It was their contention that the plaintiff had not disclosed the source of some of their documents which included correspondences that were not copied to them nor certified.
24. Although on 7<sup>th</sup> July 2023, the 5<sup>th</sup> defendant filed a notice to produce original documents the dated 6<sup>th</sup> July directed at the plaintiff, there is no evidence of service of the said notice on the plaintiff and since there was no reference to the same in the court proceedings of 10<sup>th</sup> July 2023, when this matter was fixed for ruling on the objected documents, in this ruling the court shall not comment on the same.

### **Analysis and determination**

25. The court has carefully considered the objections raised in the rival submissions. The issue that arise is whether the objections raised on the documents filed herein are merited.
26. Rule 28 (g) of the Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in other Courts (Gazette Notice No. 5178) provide for directions to be given at a pretrial conference as follows;
  28. In addition to the matters contained in Order 11, Rule 3 of the Civil Procedure Rules, 2010, the following are the orders/directions that may be issued by a Judge during a pre-trial conference:
    - (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;



27. Therefore, before this court sets a matter for hearing, it ought to determine all preliminary pretrial matters including objections on production of documents so that when the trial begins, it moves forward and progresses to conclusion. In the case of *Viginia Kathangu Maingi v Nicholas M. Mulei & Others* Machakos ELC case No. 147 of 2018, this court held that the above Practice Directions of this court and more specifically those provided for in paragraph 28, were meant to act as a reflux valve to move cases forward and avoid stagnation. Therefore, this court is invited to determine objections on production of documents before this matter can be set down for hearing.
28. Production of documentary evidence is governed by provisions under the *Evidence Act*. Section 35 of the *Evidence Act* provides for admissibility of documentary evidence as follows;

Section 35 - Admissibility of documentary evidence as to facts in issue

1. In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say; if the maker of the statement either—
- (i) had personal knowledge of the matters dealt with by the statement; or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (b) if the maker of the statement is called as a witness in the proceedings:
- Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or cannot be found, or is incapable of giving evidence, or if his attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable.
29. Therefore, the general rule is that documents ought to be produced by the makers thereof unless it is demonstrated that the maker is dead, or cannot be found, or is not able to give evidence, or where his attendance cannot be procured without unreasonable delay or expense.
30. Public documents are admissible and Section 38 of the *Evidence Act* provides for documents forming public records as follows;

An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself admissible.

31. As regards secondary evidence, sections 66 of the *Evidence Act* provide as follows;

Secondary evidence includes—

- (a) certified copies given under the provisions hereinafter contained;
- (b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;



- (c) copies made from or compared with the original;
- (d) counterparts of documents as against the parties who did not execute them;
- (e) oral accounts of the contents of a document given by some person who has himself seen it.

32. The circumstances where secondary evidence may be given is spelt out in Section 68 of the *Evidence Act* as follows;

Section 68 - Proof of documents by secondary evidence

1. Secondary evidence may be given of the existence, condition or contents of a document in the following cases—
  - a. when the original is shown or appears to be in the possession or power of—
    - i. the person against whom the document is sought to be proved; or
    - ii. a person out of reach of, or not subject to, the process of the court; or
    - iii. any person legally bound to produce it, and when, after the notice required by section 69 of this Act has been given, such person refuses or fails to produce it;
  - (b) when the existence, condition or contents of the original are proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;
  - (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in a reasonable time;
  - (d) when the original is of such a nature as not to be easily movable;
  - (e) when the original is a public document within the meaning of section 79 of this Act;
  - (f) when the original is a document of which a certified copy is permitted by this Act or by any written law to be given in evidence;
  - (g) when the original consists of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.
2.
  - (a) In the cases mentioned in paragraphs (a), (c) and (d) of subsection (1), any secondary evidence of the contents of the document is admissible.



- (b) In the case mentioned in paragraph (b) of subsection (1) of this section, the written admission is admissible.
- (c) In the cases mentioned in paragraphs (e) and (f) of subsection (1) of this section, a certified copy of the document, but no other kind of secondary evidence, is admissible.
- (d) In the case mentioned in paragraph (g) of subsection (1) of this section, evidence may be given as to the general result of the accounts or documents by any person who has examined them, and who is skilled in the examination of such accounts or documents.

33. In the instant case, the plaintiff's objection on the 5<sup>th</sup> defendant's documents is that the 5<sup>th</sup> defendant is not the maker of the documents in issue and no basis has been laid for the latter's witness who is not the maker thereof to produce the document contrary to section 35 of the *Evidence Act*. Under section 35 (2) of the *Evidence Act*, where the court is satisfied that considering all the circumstances of the case, undue delay or expense would be caused if the court were to require the maker to produce a document, documentary evidence may be admitted even where the maker is not the one producing the document.
34. A witness ought to produce documents they have personal knowledge of, or in circumstances where the witness in the performance of a duty recorded the information in the document supplied to him by a person who had knowledge of the document. Therefore, there ought to be some reasonable nexus between the witness and the document sought to be produced. Where there is a dispute on whether the document was indeed authored by the person stated therein and on the authenticity of the document, even where the witness purports to be the recipient or addressee thereof, fairness requires that the maker thereof produces such document, if the production by the maker will not cause unreasonable delay and expense. There ought to be fairness and procedural justice in admission of documents so that one party is not prejudiced by the production of documents by the opposing party.
35. Having considered the 5<sup>th</sup> defendant's documents objected to by the plaintiff, I note that the banker's cheques at page 9 of the 5<sup>th</sup> defendant's bundle were made by Paramount bank and subsequently a receipt was issued by the department of land in respect thereof. Considering that the document was made in 2009, by a private entity, time may not allow the maker to produce the document without unreasonable delay and expense. In the premises, I find that the banker's cheques are admissible.
36. As regards documents from the Commissioner of lands, which documents were signed by different persons on behalf of the Commissioner of lands, the same have been objected to as the authenticity thereof is challenged. I have considered the documents, some of which are the letters signed by the same person who is alleged to also have signed similar letters for the plaintiff, for instance a Mr. Otieno who signed on behalf of the Commissioner of lands. Although the 5<sup>th</sup> defendant alleges that they were copied in those letters, and therefore they ought to be allowed to produce them, since the authenticity thereof is challenged, it is the view of this court that it is only fair and just that the same are produced by the authors thereof. In the premises I find and hold that all the letters from the Commissioner of lands filed by the 5<sup>th</sup> defendant which are dated 15/04/2010, 17/05/2012, 26/10/2012, 20/11/2011, and 16/11/2012 shall be produced by the authors thereof.
37. In regard to the letters done by the Chief land registrar dated 20<sup>th</sup> December 2018, 15<sup>th</sup> May 2012, and 3<sup>rd</sup> September 2012, the authenticity thereof having been raised, and considering the issues in contention in this matter, I find and hold that the said documents shall be produced by the makers thereof. The valuation report by Circuit Valuers and Management Consultants dated 8<sup>th</sup> May 2019



and the surveyors report dated 10<sup>th</sup> November 2012 being expert evidence ought to be produced by the makers to shed light on the basis of their opinion and therefore I find that the same shall be produced by the authors thereof.

38. The letter dated 3<sup>rd</sup> July 2012 by Boma Surveys, the letter dated 29<sup>th</sup> May 2012 made by Joseph Munywoki, letter dated 9<sup>th</sup> August 2012 by Stephen Kitung'a, the County Director of Environment, letter dated 25<sup>th</sup> July 2012 by M.A.M Gikunda, and the beacon certificate signed by Stephen O. Ambani being documents whose authenticity is challenged I find and hold that the same shall be produced by the authors thereof.
39. The application for registration at page 27, I find and hold that the same shall be produced by the person in whose favour registration was sought as they have personal knowledge of the matter and there is no evidence that the fact of the application for registration is challenged. As regards transactions by account (account statements) of the 5<sup>th</sup> defendants, from page 38 to 120, I note that the documents were drawn by the 5<sup>th</sup> defendant and therefore their witness is the proper witness to produce the document and in that regard the objection thereto is rejected.
40. As regards the plaintiff's documents, the 5<sup>th</sup> defendant objected to 19 documents. The bankers cheques and the computer generated advice, at pages 23, 24 and 28 having been issued in 2008, and 2010, due to lapse of time and the fact that the same were done by a bank, who is a private entity, there may be unreasonable delay and expense if the maker thereof is required to come. Therefore, I find and hold that the same shall be produced by the plaintiff's witness. As for the rest of the documents objected to by the 5<sup>th</sup> defendant which include letters and internal memos, as the plaintiff's listed witness are not authors thereof, neither were the documents addressed to the plaintiff, there is no nexus between the documents and the witnesses listed. For the documents addressed to the plaintiff, the authenticity thereof is challenged and considering that some of the documents are alleged to have been signed by the same authors as those who authored the 5<sup>th</sup> defendant's documents, like W. Otieno for the commissioner of lands who allegedly authored the plaintiff's letter dated 4<sup>th</sup> October 2010 and the 5<sup>th</sup> defendant's letter dated 16<sup>th</sup> November 2010, I find and hold that it is only fair and just that the same are produced by the makers thereof.
41. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the Presence of;**

1. Mr. Koyyoko for 5<sup>th</sup> defendant
2. Mr. Gitahi holding brief for Mr. Murage for the plaintiff
3. No appearance for other defendants
4. Court Assistant - Josephine

