



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 373 OF 2010

HEZEKIAH OIRA.....PLAINTIFF

VERSUS

PATRICK QUARCOO.....DEFENDANT

RULING

This Ruling relates to an Objection raised in Court by the Plaintiff's counsel Mr. Chege on 10th May, 2017 on the production of certain documents. The Objection was heard on 21st June, 2017 during which the Plaintiff's counsel, submitted that on 15/3/2015, this Court certified the matter ready for hearing as order 11 had been complied with and that any documents thereafter should have been filed with the leave of the Court. The documents in contention were filed on 30/1/2017 and 9/5/2017 after the hearing of the case had commenced on 15/11/2016, and no leave of the court was sought.

The second ground of the objection is that the documents sought to be produced emanated from Kenya Broadcasting Corporation (KBC) and that the same ought to have been produced by the maker through a witness from the Corporation. In response, the Defendant stated that KBC is a public body and that the said documents were public documents which henceforth did not have to be produced by the maker as per **sections 79 and 82 of the Evidence Act**. ..In a quick rejoinder the Plaintiffs counsel submitted that the documents were not produced in line with the provisions of the law as the same are not certified and/or sealed.

The objection was opposed by the Counsel for the defendant who submitted that the documents sought to be introduced on 30/1/2017 are a letter from KBC and minutes of the Board of Directors. . The counsel further submitted that under section 79 (1) (a)(ii) of the evidence Act KBC is an official body and hence sought to produce the same under the provision of section 82 of the Evidence Act.

The Civil Procedure Rules 2010 requires parties to furnish their evidence in advance before the commencement of the trial. These provisions are couched in mandatory terms. Under **Order 3 Rule 2 (d) and Order 7 Rule 5 (d)**, of the CPR, the Plaintiff and the Defendant respectively are supposed, when filing suit, to also file **Copies of Documents to be relied upon at the trial**. It is clear that the documents sought to be produced herein were filed after the matter had been certified ready for hearing and indeed after hearing had commenced.

In Halsbury's Laws of England Vol 13, paragraph 1, the rationale behind discovery was expressly discussed in that;

“The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant

cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation”.

Halsbury’s Laws of England Vol 13, paragraph 40, states that,

“The party required or ordered to give discovery must make a list of documents in the prescribed form in which he must enumerate the documents in a convenient order and as shortly as possible, but describing each of them or in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it be identified”.

The Defendant filed the said documents when the hearing had already commenced and way long after the case had been certified ready for hearing. The law is trite clear that the said documents ought to have been filed at the time of filing the Suit. The defendant seeks to have leave granted when an objection has been raised and also seeks that the documents be deemed already filed. The defendant ought to have sought leave in advance.

The law provides that public documents should be produced by the makers in which case the person producing the same should have the copies properly certified and or/sealed. This is the law as per **section 80 of the evidence Act** which provides that “. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.”.

Section 82 (1) (e) of the said Act further provides the manner in which the said documents should be produced in that , “proceedings of any local authority, or of any corporate body created by Act or Ordinance, by a copy of the proceedings certified by the person having the lawful custody of the original thereof, or by a public document purporting to be printed or published by or by the authority of such authority or corporate body;”

The upshot of the above is that I find that though the contested documents were filed out of time without the leave of the Court, in the interest of justice, the said documents are admitted out of time. On the 2nd limb of the objection, the letter from KBC as well as the KBC Board of Directors minutes filed by the Defendant are not certified and therefore the same cannot be admissible in court as evidence unless the original and/or certified copies are availed and produced by the makers.

Dated, Signed and Delivered at Nairobi this **19th** Day of **October, 2017**.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... for the Plaintiff.

..... for the Defendant.