



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 221 OF 2011

STEVE MWASYA.....1ST PLAINTIFF

JACINTA NDIDNDA MUENDO2ND PLAINTIFF

*(Both suing as the legal representatives of the Estate of Sherrina Koko Tito
(Deceased)*

VERSUS

ROSEMARY MWASYA..... DEFENDANT

RULING

1. Jacinta Ndinda Muendo, the 2nd Plaintiff (P.W.1) sought to have the police abstract dated 29.12.2010 produced as an exhibit in her evidence. Mr. Kamau, learned advocate for the Defendant raised an objection.
2. This court directed the document to be marked for identification and invited learned counsels to provide their arguments.
3. The Defendant's learned advocate was of the view that this court should not allow PW1 to produce the document because she was not the maker of the same. Mr. Mutua, learned advocate for the Plaintiff on the other hand beseeched this court to allow her to produce the same. The learned advocate argued though PW1 was not the maker of the document, no prejudice would be visited upon the Defendant if she was allowed to tender it in evidence.
4. The Plaintiff's advocate further pointed out that the most of the factual matters stated on the face of the police abstract form are admitted in the defence and verbally before this court.
5. I have considered the rival submissions over the question as to whether or not the same should be produced as an exhibit by the 2nd Plaintiff. There is no doubt that the PW1 was issued with the police abstract form by Mwingi Police Station. It is also not in dispute that PW 1 is not the maker of the document. It is further, not in dispute that the police abstract form is a public document. A critical examination of the police abstract will reveal the following particulars:
 - i. ***The accident involving motor vehicle registration no. KBK 100B and KBH 358C occurred on 11.12.2010 along Thika-Garissa Highway.***
 - ii. ***That motor vehicle registration No. KBK 100B was insured by Real Insurance Co. Ltd***

iii. *That motor vehicle registration no. KBK 100B is registered in the name of Rosemary Mwasya who was also the driver at the time of the accident.*

iv. *That the cause of the accident is pending investigations.*

6. In paragraph 2 of the defence, the Defendant admits that the accident occurred as described in the police abstract form.
7. There is a terse denial by the Defendant that she owns motor vehicle registration no. KBK 100B. PW 1 avers that she was issued with the police abstract form by Mwingi Police Station. It would appear there is no contention to that fact. In my view, the main particulars stated on the aforesaid form are not denied. At the end of the trial, the plaintiffs will be required to prove their case on a balance of probabilities.
8. The police abstract form will merely show the date when the accident occurred, the motor vehicles involved and the person injured. The question as to who is to blame is still under investigation.
9. Under the provisions of the Evidence Act, the maker of the documents is required to produce as exhibits in evidence these documents. However the law is not cast on stone. The court is given a wide discretion to waive that requirement in certain circumstances and allow another person other than the maker to produce those documents. One of the circumstances is where no prejudice is visited upon the Defendant like in this case. I have alluded that the particulars of the police abstract is largely undisputed, and that is why I came to the conclusion that there is harm if PW1 is allowed to produce the document despite the fact that she was not the maker. For the above reason, I overrule the objection raised by the Defendant and allow PW1 to produce the police abstract form as PEx. No. 2.
10. Costs shall abide the outcome of the suit.

Dated, signed and delivered in open court this 31st of July 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant