



**Capri Construction Company Limited v Kenya Urban Roads Authority & 2 others  
(Environment & Land Case 282 of 2017) [2022] KEELC 2339 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2339 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 282 OF 2017**

**LN MBUGUA, J  
JUNE 23, 2022**

**BETWEEN**

**CAPRI CONSTRUCTION COMPANY LIMITED ..... PLAINTIFF**

**AND**

**KENYA URBAN ROADS AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Coming up for determination is an objection raised by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants over production of a document dated 27<sup>th</sup> January 2009 on grounds that:
  - i. The witness was neither the author nor was the said document addressed to him;
  - ii. The witness had not laid a basis for its production or how they came into its possession.
2. Counsel for the Plaintiff contested the objection stating that:
  - i. The objection had no basis in law;
  - ii. It was too late to raise the objection because: The Plaintiff's bundle was served upon the 1<sup>st</sup> and 2<sup>nd</sup> Defendant on May 2, 2017 and they did not raise any objection into production of any of the documents. Counsel also added that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not also raise any objections during pre-trial conferences.
  - iii. The document was relevant to the proceedings since it referred to the suit premises and that the letter not being addressed to the Plaintiff was irrelevant.



- iv. There was no law that prohibited a witness from getting a document that was relevant to its case.
3. In a rejoinder, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants rehashed his earlier objection adding that service of documents by the Plaintiff did not make a document admissible and a pre-trial conference did not amount to production of documents.
4. The single issue for determination is whether the letter from the Ministry of Roads addressed to one Amsa Jerotich Keitany dated 27<sup>th</sup> January 2009 on page 18 of the Plaintiff's bundle of documents is admissible as evidence. I have perused the said letter and I note that it is indeed addressed to one Amsa Jerotich Keitany by the Ministry of Roads. Amsa Jerotich is not a party to these proceedings.
5. Order 11 of the *Civil Procedure Rules, 2010* provides for pre-trial conferences which are meant to inter-alia aid in expeditious disposal of suits. To this end, courts are mandated to uphold the objectives set out under Article 159 (2) (b) and (d) as well as Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* by exploring expeditious ways of introducing evidence upfront. In that regard, the trial bundle is usually availed well in advance of the date of the trial.
6. Article 50(4) *Constitution* provides that the courts have discretion to determine whether the admission of documents would be detrimental to the administration of justice in the following words:

“Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice” .
7. In the case of *Ntarangwi M'Ikiara v Jackson Munyua Mutuera* [2018] eKLR, I cited the case of *Evangeline Nyegera (suing as the legal representative of Felix M'Ikiugu alias M'Ikiugu Jeremiah M'Raubuni (deceased) v Godwin Gachagua Githui*, where the Court of Appeal Civil Appeal No 28 of 2016 held that;

“The test for admission of evidence is relevancy (emphasize added) ..... There is need for fair determination of the dispute in the suit which may not be possible if a party is denied the opportunity to adduce relevant evidence. We hold the view that the appellant should not be barred from adducing secondary evidence through copies of the original documents. It is imperative that the nature of the documents, their number and relevance is shown. The other party will have an opportunity to cross examine on veracity and legitimacy if it be necessary” .
8. From the foregoing analysis, this court in determining whether expunging the document in question would be in the interest of justice finds that the said document is important for the just determination of the dispute. After all, no evidence has been adduced to indicate that the said document has been obtained in a manner which violates the rule of law or any right or fundamental freedom in the Bill of Rights, the defence has not challenged the authenticity of the same. Further, the defence will have a chance to cross examine the witness on the veracity and legitimacy of the said document. I also note that the document ostensibly emanates from the defendants (the ones who have raised the objection). In that regard, and as stated by plaintiff's counsel, they can simply disown it.
9. Finally, I find that the defence have not raised any rebuttal to the averment made by plaintiff's side that they were served with the trial bundle way back on April 26, 2017, close to five years ago!. The defence had sufficient time to raise any queries relating to any of the documents availed in the bundle.



10. In the final analysis, I find that the objection is not merited. The same is hereby dismissed and the document on page 18 of plaintiff's trial bundle is admitted in evidence as plaintiff's exhibit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

J.P Machira for the Plaintiff

Motari for the 1st & 2nd Defendants

Court Assistant: Eddel

