



**Joshua Mutwiri Ntarangwi ((Suing as the Legal Representative of The Estate of The Late Robert Ringera M’Kirinya alias Ntarangwi)) v M’Tuerandu & 8 others (Environment & Land Case E027 of 2021) [2022] KEELC 3999 (KLR) (20 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3999 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND CASE E027 OF 2021**

**CK YANO, J**

**JULY 20, 2022**

**BETWEEN**

**JOSHUA MUTWIRI NTARANGWI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE ROBERT RINGERA M’KIRINYA ALIAS NTARANGWI) ..... APPLICANT**

**(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE ROBERT RINGERA M’KIRINYA ALIAS NTARANGWI)**

**AND**

**VERONICA NAINE M’MUTUERANDU ..... 1<sup>ST</sup> RESPONDENT**

**GLADYS NGATHI M’TUERANDU & 7 OTHERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter is for hearing and the plaintiff has taken the witness stand as PW 1. He produced the documents in the plaintiff’s list dated November 8, 2021 save for the second document a booklet referred to as land sale documents which was objected to by Mr Mutuma, counsel for the defendants. Mr Mutuma’s objection is based on the reason that the witness was not a maker of the document, and was not a party to it.
2. Mr Ringera, counsel for the plaintiff however argued that the witness is competent to produce the said document because he was the legal representative of the estate of the late Robert Ringera M’Kiriinya alias Ntarangwi who was the plaintiff’s father and who was named in the document as a purchaser. The person named as seller is said to be also deceased. Mr Ringera argued that the witness has been in custody of the document since the time his deceased father passed on and therefore should be allowed to produce the original document. He further argued that a copy of the document was filed and served and the same was not objected to during pre- trial conference.



3. I have considered the objection raised and the rival submissions made. There is no dispute that the document in question forms part of the plaintiff's bundle of documents filed on November 8, 2021. A copy of the said document is also an annexure to the plaintiff's affidavit in support of the originating summons herein dated November 8, 2021. The document is not being introduced in the proceedings for the first time, save that it is the original that is sought to be produced.
4. The court takes note that the trial has just commenced and is still on and the witness has just started giving his evidence in chief. In my view, and being guided by the provisions of article 159 (2) (d) of the Constitution, the witness can adduce the documentary evidence in issue, more so because the makers are all deceased. In my view, no prejudice will be caused to the defendants by the production of the said document as they will have an opportunity to cross-examine the witness on the same. There is therefore room for the defendants in the case to test its worth in cross examination. Furthermore, admitting the document does not mean that it will be taken as gospel truth by the court, especially where there is evidence to the contrary.
5. It is the opinion of this court that a litigant should not be barred from laying all he has in terms of evidence before a court of law in furtherance of his case in a situation where the other party can still test the veracity or authenticity of the same while interrogating the same during cross examination.
6. The upshot is that the objection raised is overruled.

**DATED DELIVERED AND SIGNED THIS 20<sup>TH</sup> DAY OF JULY 2022**

**C K YANO**

**ELC JUDGE**

