



REPUBLIC OF KENYA



**Mwangi v Thiro & 2 others (Environment & Land Case 122 of 2014)
[2022] KEELC 14423 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14423 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 122 OF 2014
FM NJOROGE, J
OCTOBER 28, 2022**

BETWEEN

DANIEL KIMEMIA MWANGI PLAINTIFF

AND

PETER KARIUKI THIRO 1ST DEFENDANT

KENTON KIJABE CO-OPERATIVE SOCIETY 2ND DEFENDANT

LAND REGISTRAR NAIVASHA 3RD DEFENDANT

RULING

1. The witness in the stand is the 3rd defendant's chief witness a Land Registrar in the Naivasha Land Registry. The office of the Attorney General represents the 3rd defendant. Mr. Gekonga represents the first and 2nd defendants. Mr. Ngure is for the plaintiffs. During the evidence of the Land Registrar it emerged that there is a new document she found just yesterday evening as she was preparing for the case. Ms. Ngila did not prompt the witness to produce the said document as evidence, and understandably so because discovery was closed long ago and the document was not included in the Attorney General's bundle filed on 6/9/2017.
2. Mr. Ngure also stated that he was unaware that the witness had the document with her and after cross-examining her, he applied to this court for the production of that document as evidence in the case. Mr. Gekonga, naturally, objected to its production as an exhibit and said it would prejudice his client's case.
3. Ms. Ngila did not object to the production of that document.
4. I have considered the application by Mr. Ngure and the responses by counsel for the other parties. In assessing whether to allow production of the document it is this court's view that the Land Registry is the office where such a document would ordinarily be found, it being a copy of a Register of the Company that owned the suit land before distribution to its members. I have also to consider and



accept that the Land Registrar is the custodian of all the documents in that Land Registry with power/ mandate to produce the same as evidence in court or other proceedings.

5. The third point I must consider is that a background was laid for the production of the said document while she was testifying in chief in that she said she found the document only yesterday. She is not the witness who was meant to testify in this case as per the record, and she is only present because her predecessor in office retired, a fact that she expressed knowledge of while adopting that officer's witness statement filed in court on 30/6/2017.
6. Last, this court cannot tell why her predecessor never found it necessary to include the said document in the bundle submitted to the Attorney General for filing, or if he was even aware of its existence.
7. This is a court of justice. Just the mere fact that Ms. Ngila never filed the document or prompted the witness to produce it should not bar the court from admitting it in evidence.
8. Mr. Gekonga's concerns that it is not an original are sufficiently addressed by the act that the said document has been certified as a true copy of the original by the competent person – the Land Registrar, and this is evidence that should Mr. Gekonga or his client wish to view the original, they are at liberty to visit that Registry and verify it.
9. I think that in the circumstances outlined herein above, it is safer for this court to admit the said document pursuant to Mr. Ngure's application than to exclude it.
10. Justice might be better served that way. In saying this I must add that this course of action appeals more to the court for the very reason that 3DW1 is the last witness in the case, and the last witness from the 3rd defendant's office and there will be no other opportunity of having the said document produced once she leaves the stand.
11. Consequently, I allow Mr. Ngure's application. The witness in the stand has owned up to the document, to its being in her custody at the Land Registry and she is a competent witness to produce it.
12. For the purpose of its production, I order that the prior procedures on discovery are hereby dispensed with in the interest of justice, and the witness is hereby allowed to produce the said document under the direction of her counsel, Ms. Ngila.

DATED, SIGNED AND ISSUED AT NAKURU IN OPEN COURT ON THIS 28TH DAY OF OCTOBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

