



**Board of Trustees of National Social Security Fund v Attorney General (Environment & Land Case 146 of 2011) [2022] KEELC 14460 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14460 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 146 OF 2011  
LN MBUGUA, J  
OCTOBER 25, 2022**

**BETWEEN**

**BOARD OF TRUSTEES OF NATIONAL SOCIAL SECURITY  
FUND ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... DEFENDANT**

**RULING**

1. Counsel for the plaintiff has objected to the production of defendant's document as exhibits triggering this ruling. The documents in question are the ones in defendant's trial Bundle running from page 26 to 60 and were being produced as exhibits by DW1 when the objection was raised.
2. The basis upon which the objection was raised is that the documents are not originals and that the stamp of one Susan Vusha certifying the documents as originals does not indicate that she (Susan) was from the ministry of lands, adding that Susan Vusha is also not present in court to produce the said documents and testify on the veracity of the contents of the said documents.
3. Another ground raised by counsel for the plaintiff in objecting to the production of the aforementioned documents is that the plaintiff's own documents had also been rejected, hence the defendants should get similar treatment. Finally it was argued that the documents are not legible.
4. In rejoinder, counsel for the defendants averred that that the plaintiffs have been in possession of the said documents since year 2013, that the same are public documents and that the documents are old dating back to the year 1972. It is also averred that all the documents are legible and the plaintiff has not stated what prejudice the plaintiff stand to suffer if the said documents are produced, adding that the authors of the said documents cannot be traced.
5. I have looked at the documents in question running from page 26 to 60 of defendant's trial bundle and I find that save the document on page 27, the rest of the documents emanate from the ministry



of lands or from the valuer but even those ones from the valuer bear the stamp of the department of lands. The witness on the dock avers that the documents have been in their custody, and it follows that the witness is competent to produce the said documents albeit in copies format. The court has taken into consideration that most of the documents are very old dating the years 1971 – 1972.

6. On the question of legibility I have gone through all the documents and I am able to discern the contents therein save the document on page 27 which appears to be a drawing. The documents are legible hence the objection cannot be sustained on this ground.
7. On the issue that the plaintiffs were also required to produce the originals of their documents, I have seen the records of December 2, 2019 in which it was agreed by consent that pw1 was to produce the original title documents; that was the basis of the ruling delivered by this court (Judge Mbugua sitting) on February 3, 2022. On that note the issue of defendants getting the similar treatment as the plaintiffs on the production of the documents does not arise.
8. The provisions of article 50 (4) of the *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” .

9. 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’Raibuni (deceased) v Godwin Gachagua Gitbui*, where the Court of Appeal Civil Appeal No 28 of 2016 held that;

“The test for admission of evidence is relevancy..... 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”.

10. The analysis herein leads to a conclusion that the objection is not merited. All the documents in defendant’s trial bundle are admitted in evidence as exhibits except the document on page 27 of the said bundle.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

**In the presence of:-**

Lubullelah for plaintiff

Motari for defendant

Gildire Karani for Chief Land Registrar’s Office

Joseph Nanjala for Director of Survey



Court assistant: Eddel

