



**Masinde v Jivraj & 4 others (Environment & Land Case 23 of 2019)
[2022] KEELC 15075 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15075 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 23 OF 2019
EC CHERONO, J
NOVEMBER 24, 2022**

BETWEEN

ALFONSE WANJALA MASINDE PLAINTIFF

AND

ALTAF ABDULALI SHARIFF JIVRAJ 1ST DEFENDANT

NAZMUDIN ABDULALI SHARIFF 2ND DEFENDANT

COUNTY GOVERNMENT OF BUNGOMA 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

- 1 This Ruling arises from an objection taken by Mr. Masinde advocate for the 1st & 2nd defendants on the production of a power of Attorney contained in the plaintiff's further list of documents dated 14/11/2022. The learned counsel submitted that for a foreign document to be valid, it must be attested by an authorized person but not a Notary public and after attestation, the document must be registered in the Register of power of attorney and given a special Number for purposes of identification to give it its legal validity. The learned counsel further submitted that a power of attorney should be signed by both the donor and the donee signifying the power of attorney to the specific person named in the document and the Donee confirming his acceptance of the power of attorney donated to him. He further submitted that the purported document was signed by the donor on 4th February, 2020 before an advocate in Bungoma and that there is a certificate at the back showing that donor Alfonse Wanjala Masinde appeared before that advocate on 4/2/2022 after being identified by his Identity Card attested that the said Alfonse Wanjala Masinde appeared before him and was satisfied that he was the proper person who signed that power of attorney



- 2 The learned counsel in conclusion submitted that through the pleadings on record, it has been indicated that the plaintiff is not available for purposes of these proceedings and no evidence has been availed indicating that the said plaintiff was in Kenya when the purported power of attorney was signed and attested.
- 3 Mr. Kituyi, counsel for the 3rd defendant associated himself with submission by Mr. Masinde, counsel for the 1st & 2nd defendants and sought to have the objection upheld.
- 4 The objection is strenuously opposed by Mr Sichangi advocate for the plaintiff who submitted that the objection is raised in bad faith and that the intention of the 1st and 2nd defendants is to derail the hearing of this case. He submitted that the plaintiff in this case who lives in Switzerland has donated the power of attorney in order to fast track the hearing and determination of this case. The learned counsel further submitted that the plaintiff works in Switzerland but the power of attorney was executed by the plaintiff in Bungoma county and was duly registered in the lands office in compliance with the law. He submitted that the power of attorney is proper and the objection by the 1st and 2nd defendants is without merit.
- 5 I have considered the submissions by Mr. Masinde advocate and the rival submissions by Mr. Sichangi advocate for the plaintiff. The gist of this objection is whether the power of attorney sought to be produced by the plaintiff is legit and whether the current witness was properly appointed by the plaintiff through the contested power of attorney in accordance with the law.
- 6 Section 4 of the [Registration of Documents Act](#) CAP 285 provides that;
- “All documents conferring, or purporting to confer, declare, limit or extinguish any right, title or interest, whether vested or contingent to, in or over immoveable property (other than such documents as may be of a testamentary nature) and vakallas shall be registered as hereinafter prescribed—provided that, if any such document relates to land registrable under any such Act and also land not so registrable, such document shall also be registered under this Act.
- 7 Section 9 of the same Act provides that every document the registration whereof is compulsory shall be registered within two months after its execution and if executed outside Kenya shall be registered within two months after its arrival in Kenya.
- 8 Section 18 of the said Act provides that a document the registration of which is compulsory under this Act shall not, unless duly registered, be received as evidence in any transaction affecting the property to which the document relates, except with the consent of the court and upon such terms and conditions as the court may impose.
- 9 The gist of the objection to the production of the power of attorney by the 1st, 2nd, and 3rd defendants is that the same, being a foreign document must be attested by an authorized and not a Notary Public and after attestation, the document must be registered in the register of power of attorney and given a special number for purposes of identification.
- 10 I have looked at the contested power of attorney dated 4th February, 2020. The document shows that it was executed by the donor at Bungoma in the presence of Benjamin Otsiula advocate and Commissioner for Oaths. Though no official receipts were produced showing that the said power of attorney was registered, it was incumbent upon the Defendant to inquire or conduct a search and confirm whether the same was indeed registered or not. It is trite that he who alleges must proof.
- 11 The entirety of my analysis is that the objection is not merited and the same is hereby dismissed.



12 It is so ordered

**READ, DELIVERED AND SIGNED IN THE OPEN COURT AT BUNGOMA THIS 24TH
NOVEMBER, 2022**

HON. E.C CHERONO

ELC JUDGE

In the presence of;

Mr Sichangi for plaintiff

Mr. Kituyi for the 3rd defendant and also H/B for Mr. Masinde

4th & 5th defendants/advocate---absent

Wilkister C/A

