

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 691 of 1995

IN THE MATTER OF THE ESTATE OF WAWERU MWANIKI GATUHA

(DECEASED)

JANE WAMBUI.....OBJECTOR/APPLICANT

VERSUS

STEPHEN MUTEMBEI.....1ST PETITIONER/RESPONDENT

PETER MWANGI WAWERU.....2ND PETITIONER/RESPONDENT

RULING

In the course of the testimony of PW4 (GICHINGA KIIGE MUNDIA), the Petitioners' learned counsel objected to admission into evidence of a certain document which allegedly constituted a typed copy of minutes of a meeting of village elders supposedly held in or about the year 1992, and taken in the Kikuyu language. The person(s) who took down the minutes and/or later translated and typed them was/were not before court. The grounds for the objection were that the typed minutes had various unauthenticated alterations; that they were not a primary document but secondary evidence; that the translation was not under certificate; and that the original minutes written in Kikuyu language were not attached to the typed copy for purposes of authentication. The reply of the learned counsel for the Objector was that the alterations were merely to correct typographical errors; that the typed document was signed; and that the same was vital to the Objector's case.

I have considered those submissions of the learned counsels. Under section 67 of the Evidence Act, Cap. 80, documents must be proved by primary evidence except in the cases set out in section 68 of the Act where secondary evidence may be given of the existence, condition or contents of a document. The definition of primary evidence is to be found in section 65 of the same Act. Generally speaking, primary evidence means the document itself produced for the inspection of the court. There is no dispute that the typed copy of minutes sought to be introduced in evidence by PW4 constitutes secondary evidence. None of the exceptions set out in section 68 aforesaid have been invoked, and none of them have been established, either by the testimony of PW4 or by any other circumstance placed before the court. I therefore find that the document in question cannot in law be produced in evidence. I so hold. The Petitioners' objection is thus upheld with costs. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 7TH DAY OF JUNE, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 9TH DAY OF JUNE, 2006.