



Temba & another v Governor, Bungoma County Government & 3 others (Environment & Land Case E007 of 2023) [2025] KEELC 4969 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4969 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE E007 OF 2023**

EC CHERONO, J

JUNE 4, 2025

BETWEEN

KHAMALA KIZITO TEMBA 1ST PLAINTIFF

BERNADETTE TEMBA 2ND PLAINTIFF

AND

THE GOVERNOR, BUNGOMA COUNTY GOVERNMENT 1ST DEFENDANT

COUNTY GOVERNMENT OF BUNGOMA 2ND DEFENDANT

**THE CHIEF OFFICER, ROADS AND INFRASTRUCTURE BUNGOMA
COUNTY GOVERNMENT 3RD DEFENDANT**

SARYDA TRADERS LIMITED 4TH DEFENDANT

RULING

1. This is a ruling arising from an objection that was taken by Counsel for the Plaintiffs in which he objected to the production of several photographs by DW1 on the grounds that the said photographs have not been accompanied by a certificate of production as envisaged under Section 106 of the [Evidence Act](#).
2. In response, Counsel for the Defendant opposed the objection and urged the court to allow production of the said photos in the absence of the certificate of production. He argued that the plaintiffs did not raise any objection at the pre-trial stage and the said objection cannot be entertained at this juncture. He argued that the plaintiff has not demonstrated what prejudice they will suffer if the photos are produced. He submitted that the objection is a technicality which falls under article 159 of [the Constitution](#) and he asked the court to dismiss the objection.
3. I have considered the objection taken and the rival arguments by the learned Counsel. Section 106 A of the [Evidence Act](#) is section 106 of the [Evidence Act](#) provides that electronic records may be proved in



court in accordance with the provisions of section 106 b of the same Act. Section 106 (b) (1) provides as follows:

“Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied on optical or electro magnetic media produced by a computer [herein referred to as a computer output shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible”.

4. Section 106 (b) (2) provides that:

“The conditions mentioned in sub section (1) in respect of a computer output, are the following;

- i. the computer output containing the information was produced by the computer during the period over which the computer was used to store or process the information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
- ii. During the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in ordinary course of the said activities;
- iii. Throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of the operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- iv. The information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.”

5. From the provision of Sections 106 (a) and (b) of the *Evidence Act*, it is clear that any information stored in an electronic device which is then printed is prima facie admissible without necessarily having to produce the device that was used to generate it. However, section 106 (b) provides that such electronic evidence will only be admissible if the conditions laid out in that provision are satisfied, section 106 (b) (4) provides:

“In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following:

- a) Identifying the electronic record containing the statement and describing the manner in which it was produced;
- b) Giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- c) Dealing with any matters to which conditions mentioned in sub section (2) relate; and



d) Purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities [whichever is appropriate] shall be evidence of any matter stated in the certificate and for the purpose of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge of the person stating it.”

6. It is therefore clear that for electronic evidence to be deemed admissible, it must be accompanied by a certificate in line with this provision. In *William Odhiambo v IEBC & 2 others* [2013] eKLR Muchelule J stated the following:

“Section 106A of the *Evidence Act* (Cap 80) provides that the contents of electronic records may be proved in accordance with the provisions of section 106B. Section 106B deals with admissibility of electronic records....

Under sub-section (4), where a party seeks to give evidence by virtue of Section 106B he has, among other things, to tender a certificate.....”

7. The law is therefore clear on the conditions for admissibility of electronic evidence. In my view therefore, the omission on the part of the defendants to produce the certificate of production as provided for under section 106 (b) is not just a mere technicality.

8. In the end, I find and hold that the photographs sought to be produced are not admissible in evidence and the preliminary objection is merited and the same is hereby upheld and the said photographs are therefore expunged from the court record.

9. Orders accordingly.

DATED and SIGNED and DELIVERED at BUNGOMA this 04th day June, 2025.

HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr Wangila H/B for Mr. Mbugua for the plaintiff.

Mr. Onyando H/B for Mr. Makokha for the Defendant.

Bett C/A.

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