



**United Care Limited v Macharia & 2 others (Environment and Land Case  
Civil Suit 320 of 2019) [2025] KEELC 5049 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5049 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 320 OF 2019**

**CA OCHIENG, J**

**JULY 8, 2025**

**BETWEEN**

**UNITED CARE LIMITED ..... PLAINTIFF**

**AND**

**ROSELINE NJERI MACHARIA ..... 1<sup>ST</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**KENYA URBAN ROADS AUTHORITY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect to an Objection raised by Counsel for the 1<sup>st</sup> Defendant to PW1's production of copies of certain documents contained in the Plaintiff's List of Documents dated 30<sup>th</sup> September 2019. He insisted that the Plaintiff should produce original documents.
2. Counsel for the Plaintiff argued that the objection should be overruled and the Plaintiff to be allowed to produce secondary evidence on the basis that section 68 of the *Evidence Act* permits production of documents in the secondary form. She insisted that no objection was raised at the pre-trial stage and no Notice to Produce was filed under Section 69 of the *Evidence Act*. Further, that the veracity and authenticity of the documents was not challenged, yet the 2<sup>nd</sup> Defendant was aware of the documents intended to be produced. She also contended that the objection is unmerited, meant to delay this case and subject the Plaintiff to the hardship of seeking documents from government offices.
3. Counsel for the 2<sup>nd</sup> Defendant/Interested parties argued that Joash Oindo was no longer an employee of the National Land Commission (NLC). He was concerned on how as a former employee, NLC would have authority to produce Letters he had authored.
4. Counsel for the 3<sup>rd</sup> Defendant supported the objection raised by the 1<sup>st</sup> Defendant. He contended that on 4<sup>th</sup> March 2025, an objection was raised herein on production of secondary documents, but



nothing was raised in respect to Practice Directions on Standardization of Practice and Procedures in the Environment and Land Court, 2025 which was gazetted on 21<sup>st</sup> March 2025 vide Gazette Notice No. 3461.

5. He pointed out that he objects to production of several documents on the Plaintiff's list dated 30<sup>th</sup> September 2019, which include: Item No.7 which is a letter to the Director of survey dated 21<sup>st</sup> January 2013, Item no.6 which is a letter dated the 23<sup>rd</sup> January, 2014 addressed to the Chairman of the 2<sup>nd</sup> Defendant, Item no.32 which is a letter from the 2<sup>nd</sup> Defendant dated 22<sup>nd</sup> July 2017, Item No. 35 which is a letter from the 2<sup>nd</sup> Defendant dated 4<sup>th</sup> June 2016, Item No. 36 which is a letter from the Ministry of Lands dated 24<sup>th</sup> May 2018; and Item No. 37 which is a letter by the 2<sup>nd</sup> Defendant to the Director of Criminal Investigations dated 30<sup>th</sup> July 2018.
6. He submitted that since the aforementioned correspondence emanated from government offices and are not authored or addressed to the Plaintiff, there is no explanation on how it obtained them. Further, that they are not certified copies in accordance with the provisions of Section 80 of the Evidence Act. He emphasized that being public documents, the Plaintiff has to explain how the said documents were obtained. On whether secondary evidence can be admitted, he submitted that the Plaintiff did not bring itself within the exceptions set out in Section 68 of the Evidence Act.
7. Counsel for the 1<sup>st</sup> Defendant reiterated that Section 68 of the Evidence Act contains conditions, which the Plaintiff did not adhere to, and that Article 25 and 50 of the Constitution calls for a fair trial. He also relied on paragraph III of Section 7 and 8 of the Access to Information Act.
8. In rejoinder, Counsel for the Plaintiff submitted that the 1<sup>st</sup> Defendant had not indicated which documents they objected to, and reiterated that parties objecting to production of documents should have filed a Notice to Produce. She also contended that the original documents are in custody of the 2<sup>nd</sup> Defendant.

### **Analysis and Determination**

9. I have considered the instant objection including the respective oral submissions from Counsels and the only issue for determination is whether the Plaintiff can produce uncertified copies of public documents emanating from government offices.
10. The Plaintiff has sought to produce copies of documents that emanated from various government institutions, which it did not author nor were addressed to it. The Counsels for the Defendants including Interested Parties have objected to the production of the said copies. The Plaintiff's Counsel argued that no party served it, with a Notice to Produce and sought to rely on the aforementioned ELC Practice Directions issued in March, 2025. The 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant's Counsels argued that production of secondary evidence and public documents can only occur after proper certification.
11. I note Direction 23 (h) of the Practice Directions on Standardization of Practice and Procedures in the Environment and Land Court, 2025 provides that:

“ 23. In addition to the matters contained in Order 11, Rule 3 of the Civil Procedure Rules, 2010, the following are the orders/directions that may be issued by a Judge or the Deputy Registrar during a pretrial conference:

- (h) Taking of all objections to the production of specific documents, where notice has been issued to the other party, thereafter,



objections on the production of any document shall not be entertained at the main hearing.”

12. While Section 67 of the *Evidence Act* provides that documents must be produced by primary evidence except in cases set out in section 68 of the Act, when secondary evidence may be produced.

13. Further, Section 68 of the *Evidence Act* provides that:

“ 68. Proof of documents by secondary evidence.

1. Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

a. When the original is shown or appears to be in the possession or power of —

i. The person against whom the document is sought to be proved; or  
(ii) a person out of reach of, or not subject to, the process of the court; or  
(iii) any person legally bound to produce it, and when, after the notice required by section 69 of this Act has been given, such person refuses or fails to produce it;

b. When the existence, condition or contents of the original are proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;

c. When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in a reasonable time;

d. When the original is of such a nature as not to be easily movable;

e. When the original is a public document within the meaning of section 79 of this Act;

f. When the original is a document of which a certified copy is permitted by this Act or by any written law to be given in evidence;

g. When the original consists of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.

2.



- (a) In the cases mentioned in paragraphs (a), (c) and (d) of subsection (1), any secondary evidence of the contents of the document is admissible.
- (b) In the case mentioned in paragraph (b) of subsection (1) of this section, the written admission is admissible.
- (c) In the cases mentioned in paragraphs (e) and (f) of subsection (1) of this section, a certified copy of the document, but no other kind of secondary evidence, is admissible.
- (d) In the case mentioned in paragraph (g) of subsection (1) of this section, evidence may be given as to the general result of the accounts or documents by any person who has examined them, and who is skilled in the examination of such accounts or documents.”

14. While, Section 80 of the [Evidence Act](#) provides as follows;

- “ 1. Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.
- 2. Any officer who by the ordinary course of official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section.”

15. I note Section 9 to 13 of the [Access to Information Act](#) pertains to the process of requesting and accessing information held by public entities.

16. On production of secondary documents, in re the Estate of Charles Ndegwa Kiragu alias Ndegwa Kiragu - Deceased [2016] KEHC 6987 (KLR) it was held;

“The best evidence rule is a legal principle that holds an original copy of a document as superior evidence. The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, means that so long as the higher or superior evidence is within the possession of a party, or may be reached by the party, no inferior proof will be allowed. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the exceptions provided under Section 68 of the [Evidence Act](#). The conditions laid down in the said section must be fulfilled before secondary evidence can



be admitted. The rule specifies that secondary evidence, such as a copy will not be admissible if an original document exists and can be obtained.”

17. In *Kenya Railways Corporation & 2 Others v Okoiti & 3 Others* [2023] KESC 38 (KLR), the Supreme court stated as follows;

“We agree that such documents adduced by the 1<sup>st</sup> to 3<sup>rd</sup> respondents are of utmost confidentiality and relate to communication within government circles, between civil servants, relating to government engagement and operations. Even if the authenticity or contents of the documents was not questioned by the Appellants, the production of such documents as evidence must be in accordance with the law. Not having obtained and adduced the documents in the manner set out under sections 80 and 81 of the *Evidence Act* or requested for information under article 35 of *the Constitution*, the documents are inadmissible, we so declare...”

18. Based on the facts before me while relying on the legal provisions cited above and associating myself with the decisions quoted, I opine that since the documents sought to be produced are uncertified copies of public documents, which were neither addressed to the Plaintiff nor copied to it, the Plaintiff should adhere to the provisions set out in the *Access to Information Act* and *Evidence Act* before doing so. In my view the aforementioned ELC Practice Directions of 21<sup>st</sup> March, 2025 cannot supersede the provisions of the *Evidence Act* as well as *Access to Information Act*.

19. In the foregoing, I find the Objection merited and will sustain it.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF JULY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ochieng Oduol for 1<sup>st</sup> Defendant

Allan Kamau for 3<sup>rd</sup> Defendant

Athman holding brief for Asli for Plaintiff

Court Assistant: Joan

