



**Kandie v Wanyimbi & 3 others (Environment & Land Case
1 of 2021) [2023] KEELC 469 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 469 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 1 OF 2021
EO OBAGA, J
FEBRUARY 2, 2023**

BETWEEN

JULIE CHEPTARUS KANDIE PLAINTIFF

AND

GODFREY OFUNYA OMONDI WANYIMBI 1ST RESPONDENT

LAND REGISRTAR, UASIN GISHU 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

DCI, ELDORET SOUTH/LANGAS 4TH RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 31/3/2022 which seeks the following orders:-
 - a. That the Directorate of Criminal Investigations –Eldoret South/Langas (DCIO- Eldoret South/Langas) be and is hereby ordered within Seven (7) days of this order, to furnish, file, forward and /or produce the Honourable Court certified copies of that Forensic Document Examination Report Ref: CID/ORG/8/3/1/181 – 2021 dated February 24, 2021 prepared and authored by one Mr. Chania Geoffrey M (ASP), a forensic document examiner attached to the Criminal Investigations Department, National Police Service.
 - b. That the forensic document examiner, one Mr. Chania Geoffrey M (ASAP) be and is hereby compelled to appear before this Honourable court to produce the original Forensic Document Examination Report Ref: CID/ORG/8/3/1/181 – 2021.
 - c. That this Honourable court be pleased to make other orders it deems mete and just.
 - d. That the costs be in the cause.



2. The Plaintiff/Applicant contends that on or around December 2020, she went to the Lands Office to check on the status of her property and found that the same had been transferred to the 1st Defendant. As the Applicant was not party to the transfer, she reported the matter to Langas Police station where her specimen signatures were taken. A document examiner prepared a report. This is the report which the Applicant seeks to introduce in evidence in this case through the person who prepared it.
3. The Applicant's application was opposed through a replying affidavit sworn by the counsel for the 1st Defendant/Respondent. The 1st Respondent contends that the Applicant's application is defective as the supporting affidavit has been commissioned by a firm of Advocates as opposed to an individual commissioner of oaths and that, the Directorate of Criminal Investigations Eldoret South has been added as 4th Respondent when he is not a party in the main suit.
4. The 1st Respondent further contends that the Applicant is seeking to introduce more documents after pre-trial conference without leave of court and that this conduct amounts to piece-meal litigation on the part of the Applicant. The 1st Respondent further states that the provisions pursuant to which the Applicant's application is brought relate to Criminal proceedings.
5. In a supplementary affidavit sworn on May 10, 2022, the Applicant states that the inclusion of the 4th Respondent in the application was a mistake and that this court had granted her leave to introduce the document examiner's report on November 23, 2021
6. I have carefully gone through the Applicant's application as well as the opposition to the same by the 1st Respondent. The only issue for determination is whether the document examiner's report should be introduced in evidence. There is no doubt that the Applicant sought and was granted leave to introduce a document examiner's report on November 23, 2021. This leave was granted. The 1st Respondent cannot therefore be heard to argue that no leave was sought.
7. The issue of the provisions under which the application is brought cannot be made an issue. An application can suffice even where the provisions under which it is brought are not cited as long as the prayers being sought are clear.

Equally, the fact that the Commissioner's stamp indicates that it is a firm of Advocates who commissioned it cannot defeat the application. The same is true of the place of Commissioning. A party based in Eldoret can have an affidavit sworn in Nairobi as long as the party was present in Nairobi unless the contrary is shown.
8. The Applicant having been granted leave to introduce the document examiner's report, I find that the Applicant's application is well merited. I allow it in terms of prayer (a) (b) and (d).
9. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 2ND DAY OF FEBRUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Murgor for Plaintiff/Applicant

Mr. Wakwaya for Defendant/Respondent.

Court Assistant –Laban

