



REPUBLIC OF KENYA



**Sian & another v Sian & 2 others (Environment & Land Case
6 of 2009) [2023] KEELC 698 (KLR) (3 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 698 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 6 OF 2009
LN MBUGUA, J
FEBRUARY 3, 2023**

BETWEEN

NIRMAR KAUR SIAN 1ST PLAINTIFF

LAKHBIR KAUR BANSAL 2ND PLAINTIFF

AND

PRITHVI PAL SINGH SIAN 1ST DEFENDANT

LAND REGISTRAR, NAIROBI 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This is a ruling on the objection raised by counsel for the plaintiffs herein concerning production of documents in evidence. On January 19, 2021, DW1; the 1st defendant took to the witness stand, and sought to produce his supplementary list of documents dated April 21, 2022 as D Exhibits 26-29. The documents are; translation dated April 16, 2021 by Sai Ravikumar of letters dated March 18, 1998 and November 17, 2003 and copies of the respective letters, translation dated April 16, 2021 by Sai Ravikumar of 7 video clips and 7 video clips contained in a flash disk.
2. Counsel for the 1st defendant told the court that the 7 videos are in Punjabi language without any translation within the videos themselves but a transcription into english language is available in written form.
3. Counsel for the plaintiffs objected to production of the supplementary documents on ground that the videos are in Punjabi and do not comply with provisions of section 106 (4) of the *Evidence Act* pertaining to production of electronic evidence since there is no certificate accompanying the videos as required and as such, they are inadmissible. He also told the court that he had not been served with the flash disk containing the videos.



4. He submitted further that the transcriptions purportedly emanating from the videos are inadmissible since DW1 is not the maker of the transcriptions which are alleged to have been made in Canada and they are not notarized by a notary public as required in respect of documents from a foreign country. As for the letters sought to be produced, he submits that DW1 is not the author.
5. In his final rejoinder, counsel for the 1st defendant submitted that they served counsel for the Plaintiffs with the videos sought to be produced via email and can avail a certificate and a transcriber as well but he wondered if the plaintiffs are saying that the transcription is not correct.
6. Counsel for the 2nd and 3rd defendants is not opposed to the production of the 7 videos.
7. Order 11 of the *Civil Procedure Rules, 2010* provides for pre-trial conferences which are meant to *inter-alia* aid in expeditious disposal of suits. To this end, courts are mandated to uphold the objectives set out under article 159 (2) (b) and (d) as well as section 1A, 1B, 3 and 3A of the *Civil Procedure Act* by exploring expeditious ways of introducing evidence upfront hence the trial bundle is usually availed well in advance of the date of the trial.
8. In the case of *Evangeline Nyegeera (suing as the legal representative of Felix M'Ikiugu alias M'Ikiugu Jeremiah M'Raibuni (deceased) v Godwin Gachagua Githui*, Civil Appeal No 28 of 2016 the court stated that:

“The test for admission of evidence is relevancy..... There is need for fair determination of the dispute in the suit which may not be possible if a party is denied the opportunity to adduce relevant evidence. We hold the view that the appellant should not be barred from adducing secondary evidence through copies of the original documents. It is imperative that the nature of the documents, their number and relevance is shown. The other party will have an opportunity to cross examine on veracity and legitimacy if it be necessary”.
9. Clearly there is no certificate of the 7 videos which apparently are in punjab language. Likewise there is no certificate for the translation. Thus the said documents are not in tandem with the provisions of section 106 B (1) of the *Evidence Act*.
10. However, the letters in item no 1 are not electronic evidence. It is upto the 1st defendant to indicate the relevance of the said documents. The plaintiffs counsel will have a chance to conduct cross examination on the same. In the circumstances, the documents listed as item no 1 (the letters) shall be produced as evidence, while the production of the documents in item no 2 (the videos and their translations) are disallowed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Munene holding brief for Ayecko for plaintiff

Mwambaru for 2nd – 3rd defendant

Waweru holding brief for Thuta for 1st defendant

Court assistant: Eddel

