



**Reliance Metals Limited v Vejordia Garden Villa Ltd (Environment & Land
Case 277 of 2015) [2023] KEELC 15901 (KLR) (3 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 277 OF 2015**

**FM NJOROGE, J
MARCH 3, 2023**

BETWEEN

RELIANCE METALS LIMITED PLAINTIFF

AND

VEJORDIA GARDEN VILLA LTD DEFENDANT

RULING

1. The production of a copy of the sale agreement dated November 15, 2010 by PW5 is opposed by Mr. Otieno for the defendant. PW5 is the person who has owned up to having drawn and attested to the original agreement while he was working as a legal practitioner in the legal firm of Cheptumo & Co Advocates.
2. He has indicated the circumstances in which he drew and attested to that agreement, and further stated that an original copy of the agreement would ordinarily be found at that firm which he left about 12 years ago.
3. Mr Otieno for the defence is of the view that a notice to produce was issued to the plaintiff's counsel on November 26, 2018 and that no original has been placed before court as at date and also that no explanation has been given for such omission. Mr Otieno recollected that there was oral evidence adduced in the present suit that the original had been submitted to a bank for credit purposes, there was no substantiation of that claim or further evidence that the plaintiff had attempted to obtain the original from the bank for production in the present suit.
4. Under the provisions of section 68, secondary evidence of a document can be produced when a basis has been laid for the production of such secondary evidence.
5. The witness PW5 has testified that he drew the original of the agreement and identified the agreement as presented to him in this court at the hearing of his evidence-in-chief as the document that he drew.



He has outlined the circumstances under which he drew the agreement and stated that the clients were present in his office.

6. He has also indicated that he left the firm of Cheptumo & Co Advocates 12 years ago. In those circumstances where he was merely working for that firm, he cannot be expected to have the original, yet, of all the witnesses in this case he appears the most competent witness to produce the said document.
7. In this court's view therefore, a basis has been laid under section 68 1(a) (i), 1(a) (ii) and 1(b) of the *Evidence Act* as to why the witness PW5 is competent to produce the copy of agreement in this case dated November 15, 2010.
8. In the circumstances I disallow the objection by Mr Otieno and I order that PW5 shall produce a copy of the agreement as PExh 3. Hearing to proceed.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 3RD DAY OF MARCH 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

