



**Musindi v Muthoni & another (Environment & Land Case  
136 of 2012) [2023] KEELC 18679 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18679 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 136 OF 2012**

**LN MBUGUA, J**

**JULY 4, 2023**

**BETWEEN**

**ANASTASIA WANJIRA MUSINDI ..... PLAINTIFF**

**AND**

**ANTONY MWANGI MUTHONI ..... 1<sup>ST</sup> DEFENDANT**

**CITY COUNCIL OF NAIROBI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling concerns the objection raised by counsel for the plaintiff relating to the production of a certain document allegedly signed by County Chief Officer in charge of lands. At the point of objection, the witness for the 2<sup>nd</sup> defendant was on the dock and was proceeding to produce the document in question as their exhibit. Counsel for the plaintiff avers that the maker of the document should produce the same. Adding that the CEC in charge of lands is not immune to appearing before this court to give evidence in respect of the said document.
2. Counsel for the 1<sup>st</sup> defendant contends that the witness has owned the contents of the document, therefore he should be allowed to produce the same.
3. Counsel for the 2<sup>nd</sup> defendant echoed the sentiments advanced by the counsel for the 1<sup>st</sup> defendant, adding that it is not uncommon in such an organization for documents to be prepared by one person and be signed by another person.
4. In the final rejoinder by counsel for the plaintiff he urges the court to follow the law as espoused under the [Evidence Act](#) and not the practice of organisations.
5. I have considered the arguments raised herein. This is a situation where the witness on the dock has indicated that he is familiar with the document in question as he is the one who had prepared it.



6. In the case of *Ntarangwi M'Ikiara v Jackson Munyua Mutuera* [2018] eKLR, I cited the case of *Evangeline Nyegera (suing as the legal representative of Felix M'Ikiugu alias M'Ikiugu Jeremiah M'Raibuni (deceased) vs Godwin Gachagua Githui*, where the Court of Appeal Civil Appeal No. 28 of 2016 held 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”.

7. The *Environment and Land Court has Practice Directions* vide gazette No 5178 dated July 25, 2014 where by under Rule 28 (g) objections on the production of documents are not supposed to be entertained in the main hearing if the issue was not raised during Pre-Trial Exercise. And in the instance case, this court notes that the issue relating to the objection was never raised before the suit was set down for hearing.
8. Further, it is noted that the witness has claimed that he prepared the documents. Who is the other maker who can be called to produce the document? None!
9. From the foregoing analysis, I find that no evidence has been advanced by the plaintiff's counsel to indicate that the document in question was procured in a manner which violates the Constitutional principles (particularly the provisions of Article 50 (4) of the *Constitution*. Further the authenticity of the contents in the said document have not been challenged, if anything plaintiff's counsel's concern is that the document was not signed by the witness on the dock.
10. Finally, I find that the plaintiff's side will have a chance to cross examine the witness on the veracity and legitimacy of the said document.
11. In the end, the objection is hereby dismissed and the document in question shall be produced in evidence by the witness on the stand.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

**Olewe for plaintiff**

**Njugi for 1<sup>st</sup> Defendant**

**Owande holding brief for Mrs. Oyaro for 2<sup>nd</sup> Defendant**

**Plaintiff**

**Benson Gichohi for the City Council**

**Court clerk: June**

