



REPUBLIC OF KENYA



KENYA LAW
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**Hassan (As the Ad Litem Administrator of the Estate of the Late
Shaaban Hassan Shabbey) v Ali & 3 others (Environment & Land Case
E059 of 2023) [2025] KEELC 3938 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E059 OF 2023**

YM ANGIMA, J

MAY 15, 2025

BETWEEN

**AMIN SHAABAN HASSAN (AS THE AD LITEM ADMINISTRATOR OF THE
ESTATE OF THE LATE SHAABAN HASSAN SHABBEY) PLAINTIFF**

AND

SABAH SAID ALI 1ST DEFENDANT

SUMAIYAH SHAABAN HASSAN 2ND DEFENDANT

FAHD SHAABAN HASSAN AL JAUFY 3RD DEFENDANT

COUNTY LAND REGISTRAR 4TH DEFENDANT

RULING

1. By a notice of motion dated 15.07.2024 filed pursuant to Section 3 of the *Environment and Land Court Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) and Order 51 of the Civil Procedure Rules the plaintiff sought the following orders;
 - a. That the court be pleased to make an order that the Directorate of Criminal Investigation (DCI) Nyali Police Station be allowed to make a request for certified documents belonging to the deceased- Shaaban Hassan Shabbey which are in the custody of the National Registration Bureau for purposes of forensic examination including comparison, matching and confirmation as to whether the conveyances in dispute before this honourable court were signed by the deceased.
 - b. Upon the grant of the prayers above, the honourable court to order and/or direct that the forensic examiner's duly signed report to be filed in court as opinion evidence to assist this Honourable court unravel this matter expeditiously and conclusively.



- c. The court to make any other orders that it deems fit and just to grant in the interest of justice to the estate of the late Shaaban Hassan Shabbey.
 - d. The costs of this application be in the cause.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the plaintiff on 15.07.2024. The plaintiff contended that since he had disputed that the deceased had executed any instrument for transfer of the suit property then a forensic report from the relevant expert may assist the court in making a determination on whether or not the impugned transfer was undertaken by the deceased. It was further the plaintiff's case that he DCI could not access the relevant signatures from the National Registration Bureau for forensic examination and analysis without an enabling court order.
3. The defendants filed grounds of opposition dated 07.10.2024 objecting to the application. It was contended, inter alia, that it was improper for the plaintiff to enlist the support of the court in marshalling evidence in support of his case. It was further contended that since the plaintiff's cause of action was based on fraud then the application was an indication that the plaintiff had filed suit without sufficient evidence in support of his claim.
4. It would appear that when the application was scheduled for directions it was directed that the same shall be canvassed through written submissions. The record shows that the plaintiff filed submissions dated 30.10.2024 whereas the 1st -3rd defendants' submissions were dated 19.11.2024. There is, however, no indication of the 4th defendant having filed a response or submissions to the application.
5. Whereas the plaintiff submitted that he had made out a case for the grant of the orders sought the 1st -3rd defendants contended otherwise. The defendants were of the view that none of the legal provisions relied upon by the plaintiff empowered the court to make or grant the orders sought. They submitted that in an adversarial justice system like ours, each party should marshal his evidence on his own without drawing the court into the evidence collection process. The defendants further submitted that the authorities cited by the plaintiff in support of the application were distinguishable hence not applicable to the instant suit.
6. The court has perused the decisions cited by the plaintiff in support of the application. In the case of *Makenzi v Mutonde & 7 Others* (Environment and Land Case E031 of 2022)[2023]KEELC 21828 [KLR] (22 November 2023)(Ruling) Neutral citation; [2023]KEELC 21828(KLR) the court allowed the DCI to undertake a forensic examination of the sale agreement and land control board forms which were the subject of the dispute before it. Similarly, in *Kinyanjui & 2 Others v Kamau 2 Others; Javisapa Enterprises Limited* (interested party) (Environment & Land Case E060 of 2022)[2023] KEELC 20979 (KLR) (19 October 2023) (Ruling) neutral citation; [2023] KEELC 20797(KLR) the court allowed the DCI to undertake a forensic analysis of a land sale agreement and plot allocation certificates which were in dispute in a civil suit. The court finds the ratio decidendi in us both cases to be the same and to be squarely applicable in the instant suit.
7. The court takes the view that as long as the assistance sought relates to a relevant fact which is in issue and so long as the adverse party shall not suffer any serious prejudice which cannot be compensated by an award of costs, then such application should be allowed where it may assist the court in reaching a just decision. It is noteworthy that the 1st -3rd defendants did not file an affidavit to demonstrate what prejudice, if any, they stood to suffer by reason of the forensic examination. The mere fact that such analysis shall be undertaken does not necessarily mean that it shall advance the plaintiff's case or destroy the defence case. It may well turn out in favour of the defendants and vindicate their defence.



8. The upshot of the foregoing is that the court is satisfied that the plaintiff has made out a case for the grant of the orders sought in the application. As a consequence, the court makes the following orders for disposal of the application;
- a. An order is hereby made directing the DCI- Nyali Police station to request and obtain certified copies of relevant documents belonging to the deceased Shaaban Hassan Shabbey in the custody of the National Registration Bureau for forensic examination and analysis with a view to determining whether the disputed conveyances were signed by the deceased.
 - b. That the resultant forensic report shall be filed in court within 60 days from the date hereof.
 - c. Costs of the application shall be in the cause.
 - d. Mention on 29.07.2025 to confirm filing of the report.

Orders accordingly

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 15TH DAY OF MAY, 2025.

In the presence of:

Gillian - Court assistant

Ms. Bwire for the plaintiff

Mr. Mwakisha for the 1st-3rd defendants

No appearance for the 4th defedant

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Y. M. ANGIMA

JUDGE

