



Gathemia t/a Gatheru Gathemia & Co Advocates v Munene & another (Civil Suit 133 of 2015) [2024] KEHC 1305 (KLR) (Commercial and Tax) (16 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 133 OF 2015
A MABEYA, J
FEBRUARY 16, 2024**

BETWEEN

**GATHERU GATHEMIA T/A GATHERU GATHEMIA & CO
ADVOCATES PLAINTIFF**

AND

JANE GATHONI MUNENE 1ST DEFENDANT

JOAN MUGURE MUNENE 2ND DEFENDANT

RULING

1. *vide* a ruling dated 15/7/2022, the court granted leave to the plaintiff to file and serve further documents and to recall his first witness to produce the same. On 30/5/2023, PW1 was recalled to produce the documents dated 3/12/2021 that had been admitted in July 2022.
2. Counsel for the defendant opposed the production of some of the documents at pages 1-16 and 29-50 on the grounds that, they constituted police documents which PW1 was not competent to produce as he was not the maker thereof.
3. The defendant’s Counsel further opposed the documents appearing at pages 70-89 of the bundle of those documents on the grounds that, they were proceedings from the lower court and were not certified. The document at page 237 was objected to on the ground that it was communication between an advocate and the DPP therefore the witness was incompetent to produce the same.
4. Those at pages 242 and 254 were objected to on the ground that they were witness statements and PW1 could not produce them. Lastly, the document at page 264 was opposed on the basis that it is a forensic examination report and the plaintiff was not the author thereof nor the recipient and therefore could not produce the same.



5. In rebuttal, the plaintiff's Counsel argued that the documents questioned were produced to show that the plaintiff provided legal services to the defendants and not for the purpose of accuracy or facts contained thereon.
6. I have analysed the bundle of documents dated 3/11/2021 and considered the contesting positions of the parties.
7. The defendants' Counsel primarily opposes the production of documents on the grounds that PW1 was not the maker nor recipient the documents in question and cannot therefore produce the same in Court.
8. The dispute between the parties is whether, the plaintiff as a Law firm provided legal services in various matters to the defendants. The purpose of the documents is to prove the plaintiff's involvement in those matters as legal counsel for the defendants. Having looked at the documents on pages 1-16, I note that they are documents relating to a criminal matter against the defendants' brother on a fraud charge. I note further that it was the plaintiff that represented the defendants as the complainants. I find no reason to deny the admissibility of these documents in this trial.
9. Pages 242-268 are witness statements and a forensic examination report. I note that the plaintiff's position was that the documents were only being produced to show his involvement in preparation of the matters. However, the court cannot just accept them without ascertaining the veracity of the contents thereof. He was not the maker and they are therefore rejected.
10. From page 70-89 are proceedings from the lower court in the Criminal case no. 1708/12: R V. George Gitau Munene and another. The general rule is that a certified record of court proceedings is to be admitted as *prima facie* evidence in a proceeding. The record being uncertified, it cannot be admitted. The same is rejected.
11. Accordingly, save for those admitted, the rest of the documents are rejected.

It is so ordered.

DATED AND DELIVERED THIS 16TH DAY OF FEBRUARY, 2024.

A. MABEYA, FCI Arb

JUDGE

