



**Karogoi v Njenga & another (Environment and Land Appeal
E020 of 2023) [2025] KEELC 3763 (KLR) (14 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E020 OF 2023**

MAO ODENY, J

MAY 14, 2025

BETWEEN

JAXWELL MWANGI KAROGOI APPELLANT

AND

KIMANI NJENGA 1ST RESPONDENT

COUNTY GOVERNMENT OF NAKURU 2ND RESPONDENT

*(Being an appeal arising out of the Ruling of Hon. K. Kibelion, P.M
delivered on 18th May, 2023 in Nakuru CM ELC Case No 91 of 2020)*

JUDGMENT

1. This Appeal arises from the ruling dated 18th May 2023 by Hon. K. Kibelion, P.M, Nakuru delivered in Nakuru CM ELC Case No 91 of 2020. The Appellant being aggrieved by the ruling lodged a Memorandum of Appeal dated 31st May, 2023 and listed the following grounds:
 - a. That the trial court erred in law in upholding the Respondents' objection against the Appellant producing the allotment letter for commercial Plot No 79 Githioro Trading Centre.
 - b. That in upholding the objection by the Respondents, the trial court erred in law in not finding that the allotment letter was a document issued to the Appellant and the Appellant had capacity to produce it in court.
 - c. That the trial court erred in law in not finding that the allotment letter sought to be produced by the Appellant was the original hence the Appellant was in a proper person to produce it. (sic)



- d. That the trial court erred in law in not finding that the 2nd Respondent had an opportunity to interrogate authenticity of the allotment letter hence the objection against production of the allotment letter was without merit.
2. The Appellant prayed for the following orders:
 - a. That this present Appeal be allowed with costs.
 - b. That the Ruling of 18th May, 2023 be set aside and the Appellant be allowed to produce the allotment letter.
 - c. That costs of this appeal be provided for.
 3. The Appellant had sued the Respondents in the lower court vide a plaint dated 20th May, 2020 which was subsequently amended on 14th February, 2022. The Appellant sought the following orders:
 - a. A permanent injunction restraining the 1st Defendant from trespassing or in any other manner adversely dealing with the Plaintiff's parcel of land known as Commercial Plot No 79 Githioro Trading Centre.
 - b. A declaration that parcel of land known as Commercial Plot No 9 Githioro Trading Centre solely belongs to the Plaintiff.
 - c. An eviction order against the 1st Defendant from parcel of land known as Commercial Plot No 9 Githioro Trading Centre.
 - d. An order against the 1st Defendant Mesne profits for forcible detainer.
 - e. An order directing the 2nd Defendant to rectify the anomaly regarding ownership record for parcel of land known as Commercial Plot No 9 Githioro Centre by deleting the 1st Defendant's name and retaining the Plaintiff's as the legitimate owner of the suit Plot.
 - f. Costs of this suit.Alternatively
 - g. An order for compensation by the 2nd Defendant with a land of similar value as the suit Plot and for the loss incurred by the Plaintiff in effecting payment of rates for the suit Plot.
 4. The trial court in its ruling dated 18th May, 2023 found that the Plaintiff is not competent to produce the document as its maker exists and consequently directed that the document be marked for identification. This led to the Appellant filing the present appeal.

Appellant's Submissions

5. Counsel for the Appellant filed submissions dated 20th November, 2024 and identified the following issues for determination:
 - a. Whether the honorable court erred in law in not finding that the Appellant had the capacity to produce Allotment letter dated 14th January, 2023.
 - b. Whether the court erred in law in not finding that the 2nd Respondent had the capacity to interrogate authenticity of the allotment letter?
 - c. Whether the court erred in law in upholding the objection raised by the Respondents as to production of the Allotment letter dated 14th January, 2023?



6. On the first issue, counsel submitted that the Allotment letter was granted to the Appellant which document the Appellant relies on as proof of ownership of the suit plot which is currently in his custody and he is best placed to produce the same. Counsel submitted that the trial magistrate erred in failing to allow the Appellant to produce the aforementioned allotment letter and relied on Section 65 (1), 67 and 107 of the *Evidence Act* and the case of *In Re Estate of Charles Ndegwa Kiragu alias Ndegwa Kiragu- Deceased* [2016] eKLR.
7. On the second issue, counsel submitted that the onus is on the Respondents to prove the allegations of forgery and they shall have that opportunity to cross-examine on the authenticity of the said allotment letter.
8. It was counsel's further submission that during pre-trial, there was no notice issued and/or agreement between parties that prior to hearing of the suit there is need to have the allotment letter marked for identification and have its maker produce the same.
9. On the third issue, counsel urged the court to find that the trial court erred in law in upholding the objections raised by the Respondents as regards the production of the said allotment letter and urged the court to allow the orders sought in the appeal as prayed.
10. The Respondents did not file any submissions.

Analysis And Determination

11. The issue for determination is whether the Trial Magistrate erred in law by upholding the respondents' objection to the production of an allotment letter for commercial Plot No 79 Githioro Trading Centre.
12. Section 35 of the *Evidence Act* provides for admissibility of documentary evidence as follows:

Section 35 - Admissibility of documentary evidence as to facts in issue

1. In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say; if the maker of the statement either—
 - (i) Had personal knowledge of the matters dealt with by the statement; or
 - (ii) Where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (b) If the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or cannot be found, or is incapable of giving evidence, or if his attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable.



13. It is trite law that a document will be admissible if the person making it is dead, cannot be found, has become incapable of giving evidence, their attendance cannot be procured, or even if it can be procured but that would actually occasion expense and delay which in view of the court is unreasonable.
14. In this case, the Appellant did not lay the foundation as to why he was not able to call the maker of the document. An allotment letter is a public document, which can be found at the issuing institution. This can be the Ministry of Lands, Commissioner of Lands, as he then was, the county governments previously the Municipal Councils and County Councils as they then were.
15. However, Rule 28 (g) of the Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in other Courts (Gazette Notice No. 5178) provide for directions to be given at a pretrial conference as follows:
 28. In addition to the matters contained in Order 11, Rule 3 of the Civil Procedure Rules, 2010, the following are the orders/directions that may be issued by a Judge during a pre-trial conference:
 - (g) Taking of all objections to the production of specific documents, where notice has been issued to the other party, thereafter, objections on the production of any document shall not be entertained at the main hearing;
16. Order 11 of the Civil Procedure Rules was enacted to streamline case management via pretrial conference to avoid delays in the hearing of cases and the production of documents. Proper case management requires that parties exchange documents and agree on the ones that will require the makers and the ones objected for purposes of preparation of a smooth hearing. This is a process that should be done during the pretrial conference and objections should not be entertained at the main hearing as provided for under paragraph 28(g) of the Practice Directions. Parties should endeavor and take pretrial conferences seriously to thrash out all issues before trial. See the case of *Virginia Kathambimaingi v Nicholas Mwatika & 2 others* [2021] KEELC 57 (KLR).
17. In the case of *Methuselar Keyah Lubembe vs Albina Kipkemoi* [2019] eKLR, the court stated as follows, in paragraphs 8 and 9:

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“9... case conference under Order 11 is a good tool for managing court files and demands time from the Judicial Officer in conduct as well as the parties or advocates to understand the file sufficiently well so that every effort and endeavor is made to save every minute by agreeing on basic and mundane issues like the number or witnesses to be called, the need for cross examination of witnesses, any questions regarding admissibility of a document and how to have the filed documents produced. This is important so that prospects of objection upon objections which many times derail progress are avoided. It is also at the period of the case conference that parties make disclosures and discoveries towards achieving fair trial devoid of ambush.

“When done correctly the prospects of subsequent interlocutory applications like for amendments can wholly be arrested and dealt with before hand. It is at process that all players in Civil Litigation have no otherwise but to internalize and approach with seriousness deserved because when properly undertaken a very huge step is taken towards expeditious disposal of the matter”



18. Parties should always adhere to the provisions of Order 11 on pretrial conference to ease hearing of cases. If this were done, we would not be having this Appeal. Courts have in the past dismissed such objections for not complying with pretrial conferences like in the case of *Virginia Kathambimaingi v Nicholas Mwatika & 2 others* [2021] KEELC 57 (KLR) where the court held as follows:

“The 1st Defendant’s counsel having failed to raise her objections on the production of the Plaintiff’s exhibits numbers 15, 16, 17, and 18, during the pretrial conference is estopped from raising the objections at the hearing of this suit. Her argument that disallowing her objections will amount to sacrificing justice at the alter of expediency does not arise; because the provisions of *the Constitution*, the *Environment and Land Court Act*, the *Civil Procedure Act* and the Rules thereunder together with this court’s Practice Directions have inbuilt mechanisms to ensure justice, fairness, expediency, affordability and proportionality are achieved all in one package.

17. In the premises, I find that the 1st Defendant’s objection to the production of the plaintiffs’ exhibits 15, 16, 17 and 18 lacks merit and I proceed to dismiss the same with costs to the Plaintiff.
19. I have considered the appeal, the submissions by counsel and order that the Appellant be given an opportunity to lay down the foundation for the production of the original Allotment letter, the Respondent having not objected to its production during the pretrial. The Respondents will have an opportunity to prove the alleged forgery in their evidence.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

