



REPUBLIC OF KENYA



**Ngaari v Chebii & another (Environment & Land Case 169 of 2017)
[2021] KEELC 4750 (KLR) (18 November 2021) (Ruling)**

Neutral citation: [2021] KEELC 4750 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 169 OF 2017
FM NJOROGE, J
NOVEMBER 18, 2021**

BETWEEN

JAMLICK MURIUKI NGAARI PLAINTIFF

AND

MARTHA KABON CHEBII 1ST DEFENDANT

LAND REGISTRAR NAKURU 2ND DEFENDANT

RULING

1. Mr Koimet took this court through the documents of the plaintiff which his client admits in this matter, and they are 11 (eleven) in all. However, at the end, he objected to the following documents on the same ground, that the original owner should appear in court and produce them as evidence:
 - 1) Letter of allotment dated March 18, 1989.
 - 2) Lease certificate dated February 17, 1994.
 - 3) Share certificate issued to Charles Changwony.
 - 4) Ballot paper No 30.
2. Mr Koimett stated that the owner should be summoned to come and produce them as evidence in this case.
3. Even as I begin to list the documents as above in this ruling, Mr Mwangi rises up and informs the court that Charles Changwony Chebii is deceased. Mr Koimett also rises up on the heels of Mr Mwangi and buttresses that fact, and this naturally leaves the court to wonder who, if Mr Koimett knows of that demise, was intended to be called as a witness to produce the said documents in this court as expressed by Mr Koimett in his objection.



4. I have also taken note that where a person is deceased, cannot be easily found or it would delay the trial, the court may accept the production of the documents in question as evidence.
5. In this case, I have noted that three of the documents objected to are originals that is: the letter of allotment, the lease and the ballot paper. Only the share certificate is a copy of the original.
6. I have taken note of the fact that the witness in the stand, PW1, has given a background to the production of these documents, stating that they were given to him by Mr Charles Changwony Chebii at the sale of the suit land to him. In particular, I have noted that the original lease, transfer form attested to by an advocate and bearing what is said to be the photograph and original signature of Charles Changwony Chebii and bearing in mind that these were admitted by consent, there is no good ground given upon which to disallow the production of the four documents which Mr Koimet now objects to on the ground that the original owner is not present in court.
7. Indeed, there is no such ground as that “the said documents cannot be produced by PW1 because the original owner is not in court”. The question that arises in the circumstances is only whether the PW1 is competent to produce the said documents, and I find the answer to be in the positive because he was a party to the sale between him and Charles Changwony.
8. Consequently, I disallow the object by Mr Koimett and I admit the following documents as evidence in this case:
 - 1) Letter of allotment as PExh 9.
 - 2) Lease certificate as PExh 10.
 - 3) Copy of share certificate as PExh 11.
 - 4) Ballot paper as PExh 12.

Hearing to proceed.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 18TH DAY OF NOVEMBER, 2021.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

