



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 3 OF 2007**

**IN THE MATTER OF THE ESTATE OF JOSEPHAT OTANDE OKUKU (DECEASED)**

**RULING**

1. During the oral hearing on 25<sup>th</sup> June 2018 of the application dated 2<sup>nd</sup> February 2008, an objection was taken, by Mr. Mukavale, of production of certain documents by Saidi Ndombi Chitechi, a witness called by the protestor, primarily on the basis that it was a photocopy and basis had not been laid as to the whereabouts of the original and of the efforts to secure it.
2. In response, Mr. Munyendo for the applicant stated that the document had already been marked for identification, and the witness was the maker thereof as the same was in his hand.
3. The witness had testified that he was the secretary at a meeting where estate assets were shared out, he recorded the minutes and gave the original to chair of the meeting, Joel Mwimali, who made copies thereof and gave the original to the headman, Ibrahim Welumbe, for safekeeping.
4. The document in question is intended to capture the essence of the meeting in question, and in particular the resolutions made thereat. Whether such a meeting happened and such resolutions made is hotly contested.
5. From the record the witness did not say whether he made any effort to recover the original from the headman, nor indicate whether or not the said headman is available or not to testify.
6. It is true that the documents were marked for identification, but they were marked on the understanding that the witness to produce them would avail the originals. If it turned that the originals were not available at all or could not be procured without considerable hardship or expense, an application should have been made to produce copies after basis had been laid.
7. I think there is justification in the objection raised by Mr. Mukavale. I shall uphold the same and decline production of photocopies of the documents marked as MFI-P1A and P1B.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 16<sup>th</sup> DAY OF July, 2018**

**W. MUSYOKA**

**JUDGE**