



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 253 OF 2011**

**AMERISOURCE LIMITED.....1<sup>ST</sup> PLAINTIFF**

**ALEX MAUTIA MORUME.....2<sup>ND</sup> PLAINTIFF**

**- V E R S U S -**

**NATION MEDIA GROUP LTD .....DEFENDANT**

**RULING**

1. On 20<sup>th</sup> September 2018, Amerisource Ltd and Alex Mautia Morume, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs sought to produce as exhibits in evidence two documents namely:

***i. The letter of termination of contract by Westphalia trading Ltd to Amerisource dated 13<sup>th</sup> July 2010 (i.e document no. 6 in the plaintiff's bundle.)***

***ii. The letter from Westphalia trading Ltd to Amerisource Ltd dated 4.10.2010 (i.e document no. 9 of the plaintiff's bundle.)***

2. Miss Kemunto, learned advocate for the defendant raised an objection arguing that the makers of the aforesaid documents should be summoned to testify and produce the aforesaid letters. The learned advocate stated that she would like to have the makers of those documents cross-examined to establish the veracity of those letters.

3. Mr. Nyangau, learned advocate for the plaintiff urged this court to reject Miss Kemunto's objection arguing that it will be extremely difficult to secure the attendance of the authors of the aforesaid documents since they reside in the **United Kingdom (U.K)** and in **Ireland**.

4. Miss Kemunto pointed out that she has information that the company where those documents emanated, got wound up in the year 2011 having stopped trading in 2010. She pointed out that the company wound up before the contract took effect.

5. Having considered the rival arguments made by learned counsels, it is clear that the documents sought to be introduced in evidence by the plaintiff as exhibits were authored by persons other than the plaintiffs. This fact is admitted by the plaintiff's advocate.

6. The defendant's advocate has raised doubts about the veracity of those letters.

7. In fact Miss Kemunto has alluded that the contract said to have been terminated as a result of the alleged defamatory publication may not have been terminated in the first place because the company which allegedly authored the letter was wound up. It would appear the plaintiff's predicament is that it will be very expensive to secure the attendance of the director who authored the aforesaid letters.

8. It is clear in my mind that the issues raised by Miss Kemunto are so pertinent for purposes of establishing the authenticity of the subject documents.

9. Mr. Nyangau has just stated from the bar that it will be difficult to secure the attendance of the author of the documents. There is no evidence that the plaintiff has attempted to secure those witnesses. I uphold the objection raised by Miss Kemunto and direct the authors of the documents identified as no. 6 and 9 in the plaintiff's bundle be summoned to have the letters produced as exhibits in evidence.

10. Costs of the objection to abide the outcome of this suit.

**Dated, Signed and Delivered in open court this 9<sup>th</sup> day of November, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendants