



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 472 OF 2018

THOMAS K'BAHATI.....PLAINTIFF/APPLICANT

=VERSUS=

DOROTHY SEYANOI MOSCHIONI

(alias FLORENCE SEYANOI KIBERA).....DEFENDANT/ RESPONDENT

RULING

1. This is the notice of motion dated 19th July 2017 brought under order 11 rule 3(2) (a), 7 rule (1)(g), 50 rule 1 of the Civil Procedure Rules 2010, section 48 of the Evidence Act Cap 80 of the Laws of Kenya and all enabling provisions of the law.

2. It seeks orders:-

(1) The court does appoint a Fingerprint expert to examine the defendant's/respondent's fingerprints.

(2) The court does direct the defendant/respondent to present herself before the appointed finger print expert within 14 days of this court's order and undergo the fingerprint examination.

(3) The appointed fingerprint expert to conduct the examination, prepare and file the report in court within 30 days of the order of the court.

(4) The agreements dated 5th October 2013 and 24th April 2015 on pages 10-13 and 38-40 of the plaintiff's copies of documents to form the basis of the fingerprint examination.

(5) Any other order that is appropriate to meet the ends of justice.

(6) The fees for the expert and the costs of this application be paid by the defendant/respondent.

3. The grounds are on the face of the application and are set out in paragraphs (a) to (g).

4. The application is supported by an affidavit of Thomas K. Bahati, the plaintiff/applicant sworn on the 19th July 2017.

5. The application is opposed. There are grounds of opposition by the defendant/respondent dated 4th October 2017 and filed in court on 5th October 2017.

6. I have considered the notice of motion and the affidavit in support. The grounds of opposition and the oral submissions made on behalf of the parties. The issue for determination whether this application is merited.

7. **Section 48** of the Evidence Act provides that:-

“(1) When the court has to form an opinion upon a point of foreign law, or

of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of

handwriting or fingerprint or other impressions.

(2) Such persons are called experts,”

It is the plaintiff's/applicant's case that the defendant/respondent has denied entering into agreements or executing the same while alleging that they are forgeries.

8. The plaintiff/applicant has annexed a letter dated 10th June 2016 to the firm of M/S Njuguna Kahari & Kiai Advocates, requesting the defendant/respondent to avail herself to the expert to compare the thumbprint that is in the agreements. The letter is marked as annexure 'TK1'.

9. It is further the plaintiff's/applicant's case that he defendant/respondent has refused and/or neglected to voluntarily submit herself for fingerprints examination.

10. I note that the plaintiff's/applicant's case is based on the said agreements. I find that the reasons adduced by the plaintiff/applicant are justifiable in the circumstances. The defendant/respondent has not demonstrated what prejudice it will suffer if this order is granted.

11. In conclusion, I find merit in this application and the same is allowed. Accordingly, I grant the orders as follows:-

(i) That a finger print expert is hereby appointed to examine the defendant's/respondent's fingerprints. The plaintiff/applicant do facilitate the exercise and to provide details of the said finger print expert.

(ii) That the defendant/respondent is hereby directed to present herself before the said finger print expert within 30 days from the date of this ruling and undergo finger print examination.

(iii) That the fingerprint experts to conduct the examination, prepare and file the report in court within thirty (30) days of such examination.

(iv) That the agreements dated 5th October 2013 and 24th April 2013 on pages 10-13 and 36-40 of the plaintiff's copies of documents to form the basis of the finger print examination.

(v) The plaintiff/applicant do pay the fees for the expert and/or bear costs of the application.

It is so ordered.

Dated, signed and delivered in Nairobi on this 14TH day of MAY 2020.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

Ms Muriithi for the Defendant

Kajuju - Court Assistant