



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 373 OF 2010

HEZEKIEL OIRA.....PLAINTIFF

-VERSUS-

PATRICK QUARCOO.....DEFENDANT

RULING

1. This Ruling is premised on an objection regarding the letter dated 16th March, 2009 and minutes of a meeting held on 13th March, 2009 by the KBC Board of Directors, the issue being whether the same fall under the purview of public documents and hence capable of being produced in evidence.

2. According to the Plaintiff, the aforesaid minutes cannot be termed as being public documents pursuant to Section 79 of the Evidence Act. To the Plaintiff, the minutes are in fact private, confidential documents and as a result, they are not accessible to the public, neither can they be inspected. The Plaintiff further submitted that copies of such minutes cannot be certified with the intention of producing them.

3. Further to the above, the Plaintiff contended that KBC is not a public body and as such, its minutes can only be admissible upon authorization from the Board of Directors. Various judicial authorities were cited.

4. The Defendant in opposition thereto, submitted that KBC is a public body and its employees are public officials and consequently, the documents in question are public documents in line with Section 79 (1) of the Evidence Act.

5. In the Defendant's opinion, the manner of production of documents had already been sufficiently addressed vide the ruling delivered by the court on 19th October, 2017. On the issue of the two (2) documents mentioned hereinabove, the Defendant's submission is that the originals of the same were in court and in the custody of KBC's Corporation Secretary in addition to the respective certified copies. In this sense, the Defendant argued that he had complied with the ruling of 19th October, 2017.

6. As concerns the question of the appropriate person to produce the documents, it was the Defendant's averment that the minutes were prepared by the Plaintiff himself but since he objects to their production, the same should be produced by the current Corporation Secretary, who will also avail the original alongside the certified copy. Similarly, the Defendant argued that the letter of 16th March, 2009 was drawn by the then KBC Managing Director, one Mr. David Waweru; in the event that the Defendant is unable to secure the attendance of Mr. Waweru, the Defendant urges the court to allow him to produce a certified copy of the same since the original is also available in court.

7. The first issue for determination is whether KBC is a public body. The definition of the term 'public body' is set out under *Section 3 (1)* of the Interpretations and General Provisions Act as follows:

“(a) the Government, or any department, institution or undertaking thereof; or

(c) a local authority; or

(d) any authority, board, commission, committee or other body, whether paid or unpaid, which is invested with or is performing, whether permanently or temporarily, functions of a public nature”

8. KBC is established under the Kenya Broadcasting Corporation Act, Cap. 221 which stipulates that KBC is a body corporate as the name suggests. The Corporation assumes the broadcasting services of the government and its functions are largely influenced by the said government. In the court's view, it would therefore be correct to term the Corporation as being a public body.

9. Now that it has been ascertained that KBC is a public body, it follows that the documents arising therefrom are public documents.

10. The second issue relates to the production of the Board minutes. The court had previously admitted the minutes though filed out of time and further directed the Defendant to avail certified copies of the minutes and letter in court. The Defendant on his part indicated that certification was done by the Corporation Secretary and that the originals were equally available. The Defendant appears to have complied with the order of 19th October, 2017. On this basis, the court is inclined to agree with the Defendant that the objection by the Plaintiff is tenuous.

11. On the third issue of whether the documents can be admitted without calling the makers, the aforementioned ruling was clear that the documents ought to be produced by the makers. In respect of the Board minutes, it was the Defendant's submission that the same were prepared by the Plaintiff and that he was opposed to their production. The Plaintiff did not refute this allegation and further, the court has confirmed from the filed minutes that the Plaintiff was the Corporation Secretary at the time. Under the circumstances, the court will allow the production of the certified copies of the minutes through the current Corporation Secretary, provided that the original is availed as well.

12. Concerning the letter dated 16th March, 2009, the Defendant similarly sought to have it produced without calling the maker, arguing that he may be unable to trace the maker. To the court's mind, the Defendant has not demonstrated that any efforts have since been made to secure the maker's attendance. However, the court has already noted that the letter is a public document and similarly, a copy can be produced by the corporation secretary as well.

Dated, signed and delivered at **NAIROBI** this 6th day of December, 2018.

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant