



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 138 OF 2000**

**STEPHEN NYAPARA.....1<sup>ST</sup> PLAINTIFF**

**ABSOLOM SIMOTWO.....2<sup>ND</sup> PLAINTIFF**

**PAUL KIBELO.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PROVINCIAL DIRECTOR OF SETTLEMENT.....1<sup>ST</sup> DEFENDANT**

**RICHARD NGEIYWA.....2<sup>ND</sup> DEFENDANT**

**HENRY NDIEMA.....3<sup>RD</sup> DEFENDANT**

**MR. TOWETT.....4<sup>TH</sup> DEFENDANT**

**RULING**

**1. PW1, Stephen Nyapara**, the 1<sup>st</sup> plaintiff testified on **4/10/2018**. He had letters of allocation of land in **Kitalale Settlement Scheme** issued to different persons, including himself, which were marked **PMFI 2 - 11**.

**2.** His evidence was that he and others were issued with allotment letters in respect of land in Kitalale Settlement Scheme in **1998**. When the letters of allotment were sought to be produced by **PW1** Ms. Lungu objected and they were marked as **PMFI 2-11**. Ms. Arunga for the plaintiff never contested the objection at that time, maybe due to confidence on her part that there would be another witness who would produce the letters of allocation in evidence.

**3.** Later on Ms. Arunga wished to call the former Provincial Commissioner Rift Valley Province to produce the letters but withdrew from doing so as the proposed witness ceased being part of that office time back. She sought more time to call a witness who was serving in the office from which the letters originated.

**4.** On **3/12/2018** apparently flustered by lack of a witness Ms. Arunga applied to recall PW1 to produce the letters on the basis that he had been having their custody over a long period.

**5.** Ms. Lungu, naturally, again objected to the recalling of the witness for the purpose. She insisted that the letters should be produced by the maker.

**6.** These are documents that purport to be originals. It is the plaintiffs' case that these are the documents that were issued to them by the then Ministry of Lands and Settlement.

**7.** I find no good ground to hold that the plaintiffs can not individually produce the said documents which they state were issued to them and which are the backbone of their claim.

**8.** I allow the application by Ms. Arunga but only to the extent that the 1<sup>st</sup> plaintiff will produce in this case only the document was issued to him.

**Dated, signed and delivered at Kitale on this 31<sup>st</sup> day of January, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**31/01/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Wabwire for defendants

Ms. Arunga for plaintiffs

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**31/01/2019**