



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 163 OF 2016**

**LAWRENCE MITHIKA & 25 OTHERS..... PLAINTIFF**

**VERSUS**

**SOLOMON MUTEA NCHEBERE & 6 OTHERS...DEFENDANTS**

**RULING**

1. This ruling is in respect of the objection raised by plaintiff's counsel regarding the production of some of the defence documents as exhibits. When DW 1 was testifying he indicated that he would be relying on defence list of documents dated 30.5.2017 (filed on 31.5.2017). The list contains 14 items of which item 1 – 8 and item 11 to 14 were produced as exhibits.

2. Plaintiff's counsel objected to the production of item 9 and 10 averring that they desired to see the original documents. It was also averred that the authenticity of item 9, which is a **NOTICE** is contested as plaintiffs have never seen the same. Item 10 is a receipt, and it was averred that plaintiff's side desired to cross examine the person who gave the receipt to set the record straight.

3. Defence counsel in response averred that the application has been made in bad faith as pre-trial was conducted way back on 31.5.2017 and a year down the line, no notice of objection was ever served.

4. For item no. 9 the notice, defence side avers that this was a general notice which was just put on the suit land by the small enterprises authority. For item no. 10, the receipt, defence averred that this is a document which had been admitted by PW1.

5. In the **Court of Appeal case no. 28 of 2016 Evangeline Nyegera (suing as the representative of Felix M'Ikiugu alias M'Ikiugu Jeremiah Raibuni – deceased) vs Godwin Gachagua Githui**, it was held that:

***“The test for admission of evidence is relevancy.... There is need for fair administration of the dispute in the suit which may not be possible if a party is denied the opportunity to adduce relevant evidence. We hold the view that the appellant should not be barred from adducing secondary evidence through copies of the original documents. It is imperative that the nature of the documents, their number and relevance is shown. The other party will have an opportunity to cross examine on veracity and legitimacy if it is necessary”.***

6. The document listed as item 9, the notice is clearly a general notice without any indication as to who authored it. It would therefore be a futile exercise to ask defence to avail the maker of the same.

7. As for the receipt, item no. 10, this is a document which was clearly shown to PW 1 during cross examination. Indeed PW 1 had not only seen item 10, but even 11 and 12 which are more receipts. He had this to say about those receipts **“The money was for preparation of the sub-lease. It did not happen though. I was paid the money in order to prepare the lease”.**

8. As submitted by defence, this is a document already admitted by plaintiff and hence the objection on its production is unfounded.

9. I must also point out that a key component of justice is fairness. Plaintiff's side had proceeded to produce copies of documents in their list of 14.9.2016. But now they want different standards to be applied for defence by insisting on original documents. That is certainly not fair and is not in line with the provisions of **article 50 (1) of the constitution**.

10. All in all, I decline to uphold the objection. The documents listed as item 9 and 10 in defence list are considered as admissible and shall be marked as exhibits. Plaintiff will be at liberty to cross examine DW 1 on the same.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7<sup>TH</sup> JANUARY, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Miss Njenga for defendants

Mwiti for plaintiffs

Parties

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**