



**Nihazi v Katana & 2 others (Environment & Land Case 10 of 2018)  
[2019] KEELC 5098 (KLR) (28 February 2019) (Ruling)**

*Virnekas Mwanabarusi Nihazi v Boniface Kahindi Katana & 2 others [2019] eKLR*

Neutral citation: [2019] KEELC 5098 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 10 OF 2018  
AA OMOLLO, J  
FEBRUARY 28, 2019**

**BETWEEN**

**VIRNEKAS MWANAHARUSI NIHAZI ..... PLAINTIFF**

**AND**

**BONIFACE KAHINDI KATANA ..... 1<sup>ST</sup> DEFENDANT**

**SIASA SALIMU JUMA ..... 2<sup>ND</sup> DEFENDANT**

**THE REGISTRAR OF TITLES MOMBASA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. For determination is the notice of motion dated 16<sup>th</sup> July 2018 brought by the 2<sup>nd</sup> defendant herein after referred to as the applicant. The application is premised on the provisions of Order 14 Rule (4) of the Civil Procedure Rules; section 22 & 3A of the Civil Procedure Act and article 35 of the Constitution. The applicant prays that the Court do issue the following orders:
  1. That the plaintiff and the person bearing the name Bonface Kahindi Katana who has sworn an affidavit dated 11<sup>th</sup> November 2016 and the 2<sup>nd</sup> defendant produce before this honourable Court original copies of their Kenyan National Identification Cards within fourteen (14) calendar days.
  2. That the plaintiff and the person bearing the name Bonface Kahindi Katana who has sworn an affidavit dated 11<sup>th</sup> November 2016 and the 2<sup>nd</sup> defendant produce before this honourable Court clear copies of their left thumbprints or such other copies of fingerprints that would assist with verification of their true identities within fourteen (14) calendar days.
  3. That the original copies of the Kenyan National Identity Cards and copies of the left thumbprints or fingerprints of the plaintiff and the person bearing the name Bonface Kahindi



Katana who has sworn an affidavit dated 11<sup>th</sup> November 2016 and the 2<sup>nd</sup> defendant, be made available to and be impounded by the Deputy Registrar of the High Court (Environment and Land Court) to be kept by the Officer Commanding Police Division (OCPD) Mombasa.

4. That the OCPD Mombasa to keep the documents mentioned in paragraph 3 above for the purpose and under such conditions as would enable him/her make available to this honourable Court through the Deputy Registrar (Environment and Land Court) his/her findings through a report confirming or verifying the identities of the plaintiff, the person bearing the name Bonface Kahindi Katana who has sworn an affidavit dated 11<sup>th</sup> November 2016 and the 2<sup>nd</sup> defendant.
  5. That the plaintiff produces before this honourable Court for the purpose of keeping and making the same available to the 2<sup>nd</sup> defendant, certified copies of all documents and affidavits filed by the plaintiff in relation to Succession Cause No. 100 of 2011 and to also produce a certified copy of the grant of letters of administration intestate in that succession cause in which the plaintiff filed for administration of the estate of her late husband with whom they jointly owned the property the subject of this suit.
  6. That the OCPD Mombasa makes available his/her report, under paragraph 4 above, to the Deputy Registrar of this honourable Court within twenty one (21) calendar days from the date on which the plaintiff, Bonface Kahindi Katana and the 2<sup>nd</sup> defendant produce to this honourable Court the documents referenced in paragraph (3) above.
  7. That Bonface Kahindi Katana who swore the affidavit dated 11<sup>th</sup> November 2016 procures a certified copy of the identity card of Mwanza Ruwa and tenders the same before this honourable Court and to the parties to this suit within fourteen (14) calendar days.
  8. That the Court grants such other orders as it deems appropriate.
  9. That costs of this application be provided for.
2. The application is premised on the grounds listed on its face to wit that the documents sought are relevant and necessary for the proper determination of the true identities of the parties to this suit. The application is also supported by the affidavit of Ms Carol Mboku advocate for the 2<sup>nd</sup> defendant. Ms Mboku deposed that the plaintiff/Respondent has not pleaded that neither the 1<sup>st</sup> defendant nor Mwanza Ruwa were known to her or that the two were in occupation of the suit property. That the plaintiff having deposed that she lives in Germany has not stated the manner in which she has been on the suit property for the alleged uninterrupted period. That the 1<sup>st</sup> defendant has sworn an affidavit that someone stole his ID therefore it is fair that the Court gets satisfied on the true identity of the 1<sup>st</sup> defendant.
  3. In opposing the application, the plaintiff relied on the preliminary objection filed on 2<sup>nd</sup> October 2018 that stated that this Court lacks jurisdiction to hear and maintain the application. That this Court has no jurisdiction to call for proceedings in Succession Cause No 100 of 2011 and relied on the decision of *S. K Macharia & another v K.C.B Ltd & 2 others* [2012] eKLR to support his submissions.
  4. Order 14 (4) provides that:

“Notwithstanding anything hereinbefore contained, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court for such period and subject to such conditions as the Court thinks fit”.



Section 22 (a) of the Civil Procedure Act also refers to the delivery and answering of interrogations, admission of documents or facts or other material objects producible as evidence. Section 22 (c) provides that the Court can order any fact to be proved by affidavit. Article 35 of the Constitution deals with access to information.

5. The applicant is asking the Court to order the plaintiff and the person bearing the name of Boniface Kahindi Katana who swore the affidavit dated 11<sup>th</sup> November 2016 as well as the 2<sup>nd</sup> defendant and Mwanza Ruwa to produce original copies of their Kenyan Identity Cards within 14 Calendar days. The applicant also wants the Court to order these persons to avail clear copies of their left thumb prints or such other copies of finger prints that would assist with verification of their true identities within 14 days.
6. The purpose why these documents are sought by the applicant is to enable the OCPD Mombasa to make a report confirming or verifying the identities of the plaintiff, the person bearing the name of Boniface Kahindi Katana in the affidavit dated 11<sup>th</sup> November 2016 and the 2<sup>nd</sup> defendant. It is interesting that the 2<sup>nd</sup> defendant/applicant also doubts himself/his identity. He wants the Court to order him to present his original ID as well as copies of his finger prints to the deputy registrar of this Court for onward transmission to the OCPD Mombasa.
7. The 2<sup>nd</sup> defendant/applicant is also asking for presentation of clear copies of thumbprints and or fingerprints. I am unable to comprehend how thumbprints or fingerprints can have copies where identity is questioned. I am only aware of thumbprints being taken using ink which in the presence of a witness then pasted on a piece of paper by the person taking the thumbprint/fingerprints in a situation where identification is being questioned. If the parties being asked to provide clear copies of fingerprints present copies of another person, how can the applicant and or the Court or the OCPD authenticate that indeed the copy does belong to the person providing it?
8. On the request for the presentation of the ID to the OCPD, the ID card usually contains details of the holder. The applicant already has his ID with him. The said Boniface Kahindi Katana and the plaintiff can present to the applicant their original identities for him to verify if the photo appearing in the said ID belongs to the holder thereof. I do not see the need for an order to have the OCPD keep them when an identity is a tool used in the daily transactions by most Kenyans.
9. Lastly in regard to prayer 5 of the motion of providing certified copies of proceedings in Succession Cause No 100 of 2011, it is my considered and I so hold that the applicant can personally obtain the said proceedings by writing a letter to the deputy registrar of that Court and paying the requisite Court fees. The same does apply to certified copy of the grant of the letters of administration of the estate of the deceased that was issued in that cause. The applicant by making such a request is showing his indolence. This prayer is an abuse of the Court process.
10. The applicant also sought for provision of certified copy of ID card of Mwanza Ruwa. Since Mwanza Ruwa is not a party to these proceedings but is mentioned as the source of information in the affidavit dated 11<sup>th</sup> November 2016 by Boniface Katana, I shall treat this as a prayer for notice to produce. Consequently I shall grant this order and direct that Boniface Katana and or the plaintiff does provide the 2<sup>nd</sup> defendant with a certified copy of the ID of Mwanza Ruwa within 30 days of the date of this ruling.
11. In conclusion, I decline prayers 1 – 6 of the application. The applicant is at liberty to use alternative avenues provided in law to pursue his complaint if any as regards verification of the identity of parties named in his application. As stated in paragraph 10 above, prayer (7) is granted. The costs of this application is awarded to the plaintiff in the cause.



**DATED, SIGNED & DELIVERED AT MOMBASA THIS 28<sup>TH</sup> FEBRUARY 2019**

**A. OMOLLO**

**JUDGE**

