



VWT v ETM; JW & another (Interested Parties) (Matrimonial Cause E062 of 2024) [2025] KEHC 16624 (KLR) (Family) (14 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E062 OF 2024
H NAMISI, J
NOVEMBER 14, 2025**

BETWEEN

VWT APPLICANT

AND

ETM RESPONDENT

AND

JW INTERESTED PARTY

HF GROUP INTERESTED PARTY

RULING

1. This Ruling is pursuant to an objection raised orally by the Respondent on the admissibility and production in evidence of documents by the Applicant during the hearing on 29 October 2025. The objection was opposed by learned counsel for the Applicant.
2. Counsel for the Respondent objected to the production of documents at pages 107 to 134 of the Applicant’s trial bundle, arguing that the said documents, which were from a foreign jurisdiction, were not authenticated and did not have a Certificate of Electronic Evidence as required by the *akn ke act 1963 46 Evidence Act*. Further, counsel argued that this was the first time he had laid eyes on the documents, since the same had not been previously served upon him.
3. The documents in question are copies of Individual Income Tax Returns for the years 2015 to 2021.
4. In response, counsel for the Applicant argued that the objections had no legal basis. He argued that these were tax returns filed by the Applicant, jointly with the Respondent, in the USA, which are public record. Counsel contended that the documents were the same ones annexed to the Further Affidavit filed in November 2024; they were not new to the Respondent.



5. The only issue for determination by this Court is whether the objection to the admissibility of the documents is merited.
6. I note that the Applicant's Further Affidavit sworn on 22 November 2024 contains the same documents annexed as Exhibit 23B. When the matter came up for mention on 18 December 2024, counsel for the Applicant confirmed filing the Further Affidavit and submissions. Counsel for the Respondent did not deny receiving the Further Affidavit. In fact, the same is mentioned in his submissions dated 17 December 2024.
7. Subsequently, when the matter came up on 14 May 2025 for pre-trial directions, counsel for the Respondent did not raise any objection to the documents filed by the Applicant. Instead, counsel only spoke of a Notice to Produce, noting that the Applicant was yet to produce the required documents.
8. Compliance with Order 11 of the Civil Procedure Rules, 2010 has been a practice in Kenya since their formulation. Its provisions are clear regarding the steps each party in a suit, claim or petition is required to take prior to the fixing a case for hearing. In the instant case, the Respondent did not raise objections during pre-trial conference under Order 11 of the Civil Procedure Rules as stipulated in Sections 1A and 3 respectively, to draw to the attention of the others its intention to raise objections to production of documents at issue. It is not open for a party to waylay another with an objection to certain documents when the other has taken the witness stand.
9. Order 11 of the Civil Procedure Rules has significance that goes to the root of justice. Pretrial directions in strict sense contains the packaged rules that enable the right to a fair hearing as ably captured in the decision of David Kimani Gitau v Francis Wainaina [2016] eKLR, wherein Prof Joel Ngugi J, (as he then was) propounded this position as follows:

“pre-trial procedures, like all rules of procedures, are the handmaidens of justice and not its mistress. Hence, they are not formulaic or talismanic steps, which must be rigidly followed regardless of their utility to the trial process. Indeed, Order 11 of the Civil Procedure Code exists to ensure that the trial process is more efficient. Hence, a Court may, where circumstances and context permit or dictate skip, abbreviate or bespoke the pre-trial processes and procedures. The nature of this particular case indicates that this case might be a good candidate for that.”
10. In view of the foregoing, the Respondent had notice of the documents from the date of service, in November 2025. The Respondent cannot now raise an objection to their production, having had all the time to do so prior to the hearing. Further, the Respondent will have an opportunity to cross examine the Applicant on the said documents. No prejudice will be suffered if the documents are admitted.
11. The objection, therefore, fails. The suit shall proceed from where it reached.

DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOVEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Applicant: Gatheru & Kimani

For the Respondent and 1st Interested Party: Mwangi Ndirangu

For 2nd Interested Party Ms. Mbiru



Court Assistant: Lucy Mwangi

