

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 127 OF 2019

**GOD’S HOUSE OF MIRACLES (Through National Officials
BISHOP JOSHUA MULINGE**

PASTOR MORRISON KAREITHI MWANGI)
PLAINTIFFS

VERSUS

PETER JUMA KURIAH MWANGI 1ST
DEFENDANT

ERDEMANN PROPERTIES LIMITED 2ND
DEFENDANT

GREAT WALLS GARDEN LIMITED 3RD
DEFENDANT

ZEYUN YANG 4TH
DEFENDANT

ZHANG JUNG 5TH
DEFENDANT

AND

**KENYA COMMERCIAL BANK LIMITED
(KCB LIMITED)..... INTERESTED
PARTY**

RULING

1. When this matter came up for hearing on 25th November, 2025, the 1st and 2nd - 5th Defendants’ counsel objected to the

production of “a copy of an agreement and minutes dated 5th August, 2016 held at the law firm of Simba and Simba Advocates” by PW4.

2. According to counsel for the Defendants’, the said document was not in its original form, but a photocopy. Counsel further submitted that the document does not state who authored it and has names of people, some who are alleged to have signed it, while others did not.
3. According to the Defendants’ counsel, the authenticity of the document is doubtful and that to the extent that not all the alleged people who were present in the said meeting signed the minutes, the same is not admissible.
4. In response, the Plaintiff’s counsel submitted that the original document is with the advocate who drew, witnessed and signed it, Stella K. Muendo. Counsel submitted that it is the Defendants who objected to the said advocate to come to court and testify, which objection this court upheld, and that in the circumstances, the witness, who was a signatory, can produce the copy in evidence.
5. Counsel submitted that the Defendants will have an opportunity to cross-examine PW4 on the contents of the document, and that those parties who did not sign the document are at liberty to renounce the document when their turn to testify arises.

6. The law pertaining to the production of secondary evidence, which includes photocopies, is found in **section 68** of the **Evidence Act. Section 68(1)** of the **Evidence Act** provides as follows:

“(1)Secondary evidence may be given of the existence, condition or contents of a document in the following cases -

(a) when the original is shown or appears to be in the possession or power of -

(i) the person against whom the document is sought to be proved; or

(ii) a person out of reach of, or not subject to, the process of the court; or

(iii)any person legally bound to produce it, and when, after the notice required by section 69 of this Act has been given, such person refuses or fails to produce it;

(b) when the existence, condition or contents of the original are proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in a reasonable time;

7. The circumstances of this case shows that the 1st Defendant signed the impugned document. Further, it appears that the original document is in the custody of the 1st Defendant's advocate, who cannot testify because of the objection raised by the 1st Defendant. To that extend, and considering that the witness signed the document, the same is admissible pursuant to the provision of **section 68 (1) (c)** of the **Evidence Act**.
8. Although the Defendants' counsel argued that a notice should have been issued under **section 69** of the **Evidence Act**, the evidence before the court shows that none of the Defendants are in possession of the original document. Consequently, the said document can only be produced under **section 68(1) (c)** of the **Evidence Act** and not **68 (1) (a)** of the **Evidence Act**. Which requires the issuance of notice to produce.
9. As to the issue of prejudice that may be visited to the people mentioned in the said document and, especially those who did not append their signatures on it, it is the holding of the court that the said people will have an opportunity, through counsel, to cross-examine the witness, and deny having attended the said meeting.
10. For those reasons, the objection to the production of the document dated 5th August, 2016 in the Plaintiff's 4th

supplementary list of documents is dismissed with no order as to costs.

Dated, signed and delivered virtually in Nairobi this 28th day of November, 2025.

O. A. Angote
Judge

In the presence of;

Mr. Lusi for 2nd – 5th Defendant

Mr. Mwalagho holding brief for Makau for 1st Defendant

Court Assistant: Tracy