



REPUBLIC OF KENYA



**KENYA LAW**  
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**Langat & 2 others v Atticon Limited & another (Commercial Case E201 of 2021 & E138 of 2018 (Consolidated)) [2025] KEHC 18316 (KLR) (Commercial and Tax) (5 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18316 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**COMMERCIAL CASE E201 OF 2021 & E138 OF 2018 (CONSOLIDATED)**  
**DO CHEPKWONY, J**  
**DECEMBER 5, 2025**

**BETWEEN**

**ARNOLD KIPKURUI LANGAT ..... 1<sup>ST</sup> PLAINTIFF**  
**BARONS ESTATE LIMITED ..... 2<sup>ND</sup> PLAINTIFF**  
**NONIKO HOLDINGS LIMITED ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ATTICON LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**FRANKLIN MITHIKA LINTURI & OTHERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The matter came up for further hearing on 24<sup>th</sup> November, 2025 and parties seemed to disagree on the production of certain documents forming part of the Plaintiffs' bundle of documents. Counsel expressed divergent positions on whether the Plaintiffs could, at this stage, produce the forensic examiners' documents at pages 355–372 and 373–378 of their bundle, and further, whether the affidavit sworn by Michael Njenga Mutunga at pages 455–456 could be adopted as part of the Plaintiffs' evidence or whether the said deponent of the said documents could be called to testify on facts deponed therein.
2. It is imperative to recall that this Court, by its ruling delivered on 18th February 2025, exercised its discretion under Sections 1A, 1B and 3A of the *Civil Procedure Act*, as read with Order 18 Rule 10 and Order 50 Rule 6 of the Civil Procedure Rules, to re-open the Plaintiffs' case strictly and solely for the limited purpose of enabling the Plaintiffs produce documents which had been inadvertently omitted during the main trial. The Court's intention was narrow and precise, and solely intended to avoid prejudice that was to be occasioned by accidental omission of documents already on record but



- not to grant an opportunity for the Plaintiffs to generate new evidence, raise fresh arguments, or cure evidentiary deficiencies in their case.
3. Accordingly, the leave granted on 18<sup>th</sup> February, 2025 was not a carte blanche, nor an open invitation for the Plaintiffs to revisit, expand, or reconstruct their entire evidence as presented or to fill gaps which might have been exposed during trial. Thus, the court warns the parties that the ruling dated 18<sup>th</sup> February, 2025 was not an avenue to introduce extraneous matters that ought to have been addressed during the primary hearing of the Plaintiffs' case.
  4. Now turning to the two questions arising from the submissions made by the counsels for the parties on the 24<sup>th</sup> November, 2025, that is, whether the Plaintiffs may produce the forensic examiners' documents at pages 355–372 and pages 373–378 and whether the Plaintiffs may adopt and rely on the affidavit evidence of Michael Njenga Mutunga at pages 455–456, or call the said deponent to testify, the court expresses the view that the documents at pages 355–372 and pages 373–378 of the Plaintiffs' bundle form part of the Plaintiffs' original bundle filed before the close of the Plaintiffs' case. These are the documents (exhibits) that were inadvertently not produced through their makers, and it is this omission that prompted the Plaintiffs' earlier application that led to the ruling of 18<sup>th</sup> February, 2025.
  5. Since the Court's ruling of 18<sup>th</sup> February, 2025 expressly permitted the re-opening of the Plaintiff's case specifically for the limited purpose of producing the omitted documents, and since these forensic reports are indeed among the documents previously filed but not produced, the production of these documents falls squarely within the scope of the leave granted in that ruling.
  6. However, as correctly argued by the Defendants, and consistent with the provisions of Section 35 of the *Evidence Act* and the general principles governing expert evidence, such documents, being expert reports, can only be produced through their makers, unless the makers are shown to be unavailable or unless the party seeking to rely on them satisfies the strict requirements for admission of documentary evidence where the maker cannot be availed, reached or traced. The Plaintiffs have not sought such exceptional orders, nor has the Court been moved to grant them such leave in its prior ruling. As such, if the Plaintiffs are inclined, they remain at liberty to seek leave to call the makers of the forensic reports at pages 355–372 and 373–378 or any representative/substituted witness to produce and verify those documents, with corresponding leave to the Defendants to cross-examine such witnesses.
  7. On the second question, the Court finds the Plaintiffs' position legally untenable and procedurally misplaced. Firstly, the affidavit at Pages 455–456 was is not per se, a document supporting the Plaintiffs' case, but an opinion expressed in favour of the Plaintiff's case. Secondly, the issue of whether affidavit evidence can be admitted in lieu of oral testimony it is trite in law that affidavit evidence is generally inadmissible as evidence-in-chief in trials unless parties consent or the Court specifically directs otherwise. No such consent or direction exists here nor was it the subject of the Plaintiffs' earlier application that resulted in the ruling of 18<sup>th</sup> February, 2025. Thirdly, calling the deponent of the affidavit at Pages 455–456 to testify at this stage would amount to reopening the Plaintiffs case far beyond the narrow confines permitted in the ruling of 18<sup>th</sup> February 2025, which would in effect allow the Plaintiffs to re-open the case on matters they failed to plead and address during trial. As such, determining the probative value or admissibility of the affidavit at Pages 455–456 is a question that should be appropriately addressed in the final Judgment, based on the evidence that would properly be on record and after parties have canvassed their respective cases in their written submissions.
  8. In the upshot, the Plaintiff's request to call the deponent of the affidavit at Page 455 to 456 is outside the scope of the leave granted vide the ruling of 18<sup>th</sup> February, 2025. And any argument relating to whether the affidavit at Pages 455–456 has evidentiary value, should, if necessary, be addressed by the parties in their final submissions for the court's consideration in its Judgment.



9. For avoidance of doubt, the following directions issue:-

- a. The Forensic Examiners Reports at Pages 355 – 372 and Pages 373 – 378 be and are hereby deemed as having been produced pursuant to the ruling of 18<sup>th</sup> February, 2025.
- b. The Plaintiffs be at liberty to formally seek leave to call the makers of the said forensic reports at the aforementioned pages of the bundle of documents and or substituted witnesses to produce and verify the same.
- c. In the event the Plaintiffs are granted such leave, the Defendants to be accorded corresponding leave to cross-examine this(these) witness(es).
- d. The Plaintiffs request to call the deponent of the Affidavit at Pages 455 to 456 of the bundle of Plaintiffs' documents be and is hereby declined.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5<sup>TH</sup> DAY OF DECEMBER ,2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of :

Mr. Kiptoo appearin alongside Mr. Lorot counsel for Plaintiffs

Mr. Wanyengi Njoroge holding brief for Mr. Karanja counsel for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents

Mr Ombuto counsel for the Interested Party

Court Assistant – Martin/Sakina

