

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 168 OF 1990

LOISE NYAKINYUA NJOROGE.....
.....PLAINTIFF

=VERSUS=

ATTORNEY GENERAL.....
DEFENDANT

RULING

1. This ruling is on the Defendant's Application dated 20th November 2025. The same which is by the Defendant the Honourable Attorney General of the republic of Kenya, is supported by the Supporting Affidavit of C. K. BETT, sworn on 20th November 2025. The Application seeks the following orders:

- (a) (Spent).**
- (b) That this Court be pleased to review and/or set aside, its order dated 30th October 2025; which order allowed the Plaintiff to call as a witness, one SEBASTIAN OMBOTO a private Investigator, to testify and/or produce the Investigation Report dated 9th August 1989.**
- (c) That the said Report dated 9th August 1989 and prepared by DETER & DETEC AGENCY, be expunged from the record.**

(d) That costs of this Application be in the cause.

2. The Application is based on the following grounds:

- (a) *That the intended witness being a private investigator, is not an expert within the meaning of Section 48 of the Evidence Act (Cap 80 Laws of Kenya); hence lacks the requisite qualification to give an expert opinion evidence on the manner in which the accident occurred.*
- (b) *That the said private investigator neither witnessed the accident nor participated in any official investigation carried out by lawful authorities; and his report is based on hearsay, conjecture and speculation.*
- (c) *That the Plaintiff has conveniently neglected to call the Investigating Officer to produce the Police Abstract; who would have given an unbiased account of how the accident occurred.*
- (d) *That additionally, this Court has on previous occasions pronounced itself on this very issue; holding that the private investigator could not take the stand for the Plaintiff's failure to comply with Order 11 of the Civil Procedure Rules, and for failure to file a Witness Statement of the Private Investigator.*
- (e) *That allowing such evidence would prejudice the Defendant's right to a fair trial and unduly burden the Court with inadmissible opinion evidence contrary to the Evidence Act.*
- (f) *That it is in the interests of justice and the proper administration of the law, that the said private*

investigator be barred from taking the witness stand in this matter.

Analysis & Determination

3. The Application was canvassed by way of written submissions. I have considered the Application (together with its Supporting Affidavit), the Response to it, and the parties' rival submissions. I have also considered the record of the previous proceedings in this suit.
4. On 20th May 2025, this Court directed that no additional witness statements or additional documents, may be filed after the close of business on 23rd May 2025. It also retained the then scheduled hearing date of 27th May 2025.
5. It reiterated those directions, in its further directions of 27th May 2025. In which directions, it emphasized Section 1A of the Civil Procedure Act (Cap 21 Laws of Kenya). Which provision states that parties and their Advocates are under a duty to obey and abide by the directions and orders of the court. It also the same directions, noted that this suit is an old one that has been in court for the last 34 years.
6. Further that the Plaintiff having been earlier granted time to file additional witness statements and additional documents but failed to comply, the court cannot accede to any other request to file additional witness statements or additional documents. It then set the suit down for hearing, and on the scheduled date the hearing proceeded with the Plaintiff's testimony.
7. During the hearing, the Plaintiff was legally unable to produce some of the documents she intended to rely on in her suit, and which were not part of the record. To circumvent and skirt this legal hurdle, the Plaintiff's

Advocate renewed her request for leave call as an expert, the said private Investigator, to produce the Report.

8. This renewed bid is not only coming late in the proceedings. It is also contrary to the Court's earlier directions. Hence is an abuse of the court process. It is intended to unlevel the playing field, hence defeat and overturn the court's said directions through the back-door. The Court inadvertently granted the request, and which was an informal Application made orally in the course of proceedings on 30th October 2025.
9. Being dissatisfied with this order and the Plaintiff's said persistence on bending the law, the Defendant has through this Application, sought the review and setting aside of the said order of 30th October 2025.
10. Upon considering the parties respective positions and the law, this Court reaffirms its earlier directions and orders that the hearing of the suit proceeds without any additional witnesses, additional witness statements, or additional documents.
11. The upshot of this is that the Defendant's Application is hereby allowed, and this Court's said order of 30th October 2025, is hereby reviewed and set aside accordingly. With the consequence that the Plaintiff shall not call any additional witnesses (including the said private Investigator proposed as an expert witness) or produce any additional documents (including the said Investigation Report).
12. Each party shall bear its own costs of the Application.

DATED and DELIVERED at NAIROBI on this 17th day of December 2025.

PROF (DR) NIXON SIFUNA

JUDGE