



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)**  
**AT MILIMANI LAW COURTS, NAIROBI**  
**ELC NO 1035 OF 2016**

**SIMANDI INVESTMENTS  
LIMITED.....PLAINTIFF**

**-VERSUS-**

**ROSALINE NJERI  
MACHARIA.....1<sup>ST</sup>  
DEFENDANT**

**NATIONAL LAND  
COMMISSION.....2<sup>ND</sup> DEFENDANT**

**KENYA NATIONAL HIGHWAYS  
AUTHORITY.....3<sup>RD</sup> DEFENDANT**

**AND**

**GERSHOM OTACHI BWOMANWA,  
CHAIRMAN, NATIONAL LAND COMMISSION..... INTENDED  
CONTEMPTOR**

**KABALE ARERO, CHIEF EXECUTIVE OFFICER,  
NATIONAL LAND COMMISSION..... INTENDED  
CONTEMPTOR**

**RULING**

1. I have considered the oral application by the plaintiffs on admission of the sale agreement and the rebuttal on the same by the defendants.
2. I have taken into account the provisions of Section 35 of the evidence Act which section reads;

### **35 . Admissibility of documentary evidence as to facts in issue**

1. In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

- a) If the maker of the statement either
  - i. had personal knowledge of the matters dealt with by the statement; or
  - ii. where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- b) If the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or cannot be found, or is incapable of giving evidence, or if his attendance cannot

be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable

3. Basing my reasoning on the above section, I find that it will be in the interest of Justice to allow the admission of the said sale agreement.
4. I hold the view that the admission of the document will not prejudice the Defendants as they will be afforded an opportunity to cross examine any parties that seek to rely on the same.
5. The upshot of the foregoing is that the document is allowed on record

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **27<sup>th</sup> day** of

**JANUARY 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**

**Ruling delivered in the presence of: -**

**Mr. Arundah**..... for the Plaintiff

**Mr. Brian Okoth**..... for the 1<sup>st</sup> Defendant

**Mr. Brian Okoth for Odoro**..... for 2<sup>nd</sup> Defendant.

**Philomena W.**..... Court Assistant

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