



**Limo v Cheserek & another (Environment and Land Case
20 of 2020) [2026] KEELC 2456 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2456 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 20 OF 2020**

CK YANO, J

APRIL 30, 2026

BETWEEN

ELLY JEPKOECH LIMO PLAINTIFF

AND

SAMMY BOI CHESEREK 1ST DEFENDANT

SUSAN WANGOI KIBE 2ND DEFENDANT

RULING

1. What is before this court is the Notice of Motion application dated 29th October, 2025 where the 1st Defendant/Applicant seeks for orders THAT:-
 1. The Plaintiff be ordered to submit the original sale agreement dated 4th June, 2019, acknowledgment dated 8th July, 2019, application for consent of land control board to the Directorate of Criminal Investigations Eldoret West for verification by a document examiner.
 2. The document examiner's report be submitted to court.
 3. The costs of the application be in the cause.
2. The present Application is premised on various grounds which have been highlighted in the body thereof. In addition, the Application is supported by an affidavit of even date sworn by Susan Wangoi Kibe, the 1st Defendant/Applicant herein. She deponed that the documents relied on by the Plaintiff in claiming that he purchased the land known as Uasin Gishu/Kimumu/7968 (the suit property herein), are not genuine. She denies having had any dealings with the Plaintiff, and asserts that there is need to have the authenticity of the said documents verified by the Directorate of Criminal Investigations (DCI), which has the mandate to conduct investigations.
3. The 1st Defendant averred that the DCI has sought submission of the original documents, which are in the Plaintiff's possession, for verification. The 1st Defendant thus seeks an order that the original



documents submitted to the DCI for verification by a document examiner. She insists that the verification is sought in the best interest of justice to forestall fraudulent claims and inspire confidence in the judicial system. She urged that the exercise will narrow down the issues for determination by this court, and that it is fair and just that this application be allowed.

4. The Plaintiff opposed the application through her Replying Affidavit sworn on 14th November, 2020 (sic), which I suspect is 2025. She termed the application incompetent, devoid of merit and an abuse of court process. She deponed that the matter was listed for pre-trial on various occasions before it was set down for hearing. She averred that the matter then proceeded and she testified and closed his case on 26th February, 2024. She pointed out that the application had been brought 5 years after institution of the suit, and 18 months after she had closed her case.
5. The Plaintiff claims that she will be prejudiced if the orders sought herein are granted since she will have no opportunity to comment on the new evidence, thus she will be condemned unheard. She accused the 1st Defendant of fishing for new evidence and attempting to build her case after the close of her case and at her prejudice. She claimed that the 1st Applicant's conduct is ulterior and amounts to trial by ambush. She insists that the present application offends the principle of natural justice and is brought in bad faith, with the intention to frustrate the conclusion of the matter.

Submissions:

6. This case was mentioned on 10th March, 2026 when the court directed that the application be canvassed orally in court.

The 1st Defendant/Applicant's Submissions;

7. In his submissions, Mr. Wainaina, Counsel for the 1st Defendant acknowledged that the Application sought to have the agreement for sale dated 04.06.2019, acknowledgment dated 08.07.2019 and the application or land control board (LCB) consent submitted to the DCI Eldoret West for investigation. Counsel submitted that the Plaintiff claims to have purchased the land from the 1st Defendant, while the 1st Defendant disputed the purported sale, but admits having sold the land to the 2nd Defendant. Counsel submitted that the genuineness and authenticity of the said documents was in question.
8. Counsel acknowledged that the Plaintiff had closed her case. He however submitted that the application is in the best interest of justice and fairness. Counsel submitted that the investigation report will be used as a sword and a shield depending on the results. Counsel explained that the DCI was a neutral party not controlled by any of the parties herein. He urged that the investigation exercise will narrow down the issues to be determined by the court, and may even aid the Plaintiff's case. Counsel concluded that the Plaintiff will have an opportunity to cross-examine the maker of the report, thus he asked that the application be allowed.

The Plaintiff/Respondent's Submissions;

9. On his part, Mr. Kibii for the Plaintiff argued that the application is devoid of merit and is an abuse of court process. Counsel further termed the application mischievous for seeking to introduce a documents examiner's report after closure of the Plaintiff's case, contrary to the principle of natural justice. He pointed out that the application had been filed 5 years after institution of the suit, and the agreement has been in their custody all along.
10. Counsel submitted that the parties had exchanged their documents during pre-trial, and if the 1st Defendant had any issue on the authenticity of the documents, she should have filed her application before the matter proceeded for trial. Counsel argued that the 1st Defendant had not demonstrated



that the new evidence she seeks to introduce was not in her custody to warrant the present application. He further argued that the application was filed a few days to the date fixed for defence hearing.

11. Counsel contended that the application is made in bad faith, and is meant to frustrate the matter from proceeding for defence hearing and fill the gaps in the 1st Defendant's case. Counsel urged that the Plaintiff had been cross-examined thoroughly on the authenticity of the documents, thus the matters raised in the application are mute. He accused the 1st Defendant of mischievously trying to criminalise these proceedings and have the court direct an independent constitutional office to do its work.
12. Counsel for the Plaintiff argued that there had been no prior complaint that the agreement was a forgery. He further submitted that the 1st Defendant was using the court to build her case. Counsel contended that the Plaintiff would be condemned unheard if the present application is allowed. He asserted that the objective of Order 11 was to ensure parties knew in advance the nature of evidence being relied on by the other party, and the present application defeats its very purpose. That the Plaintiff testified on the strength of the documents presented on record, and he asked the court to dismiss the application.

The 1st Defendant/Applicant's Rejoinder;

13. Responding to the submissions by the Plaintiff's Advocate, Counsel for the 1st Defendant asserted that the original agreement is in the Plaintiff's custody. He submitted that there is no new evidence being introduced. Counsel argued that all that will be produced is a report confirming the authenticity of the documents in court to avoid fraudulent claims. Counsel submitted that the Plaintiff is not being condemned unheard as she will have an opportunity to cross-examine the maker of the report. He denied that the 1st Defendant was asking the court to direct independent agencies to do their work, but that she was asking the court to allow for verification of the documents relied on in court. He submitted that the report to be presented will allow the court to reach a just and fair determination.

Analysis and Determination:

14. Having considered the present application, the Plaintiff's response and the oral submissions made by Counsels in this suit, the singular issue presenting itself for determination is whether the orders sought by the 1st Defendant should issue.
15. This is a land matter that is premised on the allegation that the 1st Defendant sold the suit property twice. The Plaintiff brought this suit claiming that she purchased the suit property from the 1st Defendant. The Plaintiff relies on the agreement for sale, the acknowledgment as well as the application for LCB consent.
16. The 1st Defendant has denied the Plaintiff's claim. She specifically denied having any dealings with the plaintiff, and stated that the documents that the Plaintiff is relying on are not genuine.
17. The 1st Defendant has asked this court to order the Plaintiff to submit the original agreement for sale, acknowledgment and application for LCB Consent to the DCI so that they can be verified by a document examiner. The Plaintiff further seeks that thereafter, the DCI do prepare and file a report before this court.
18. The Plaintiff has opposed the application, claiming that the 1st Defendant was asking the court to direct an independent Constitutional body on how to do its work.
19. The DCI is established under Section 28 of the [National Police Service Act](#) No 11 of 2011. It is a directorate in the National Police Service, which is established under Article 245 of [the Constitution](#)



2010 as independent and not subject to direction or control by any person or authority. The Plaintiff is thus right to state that this court cannot direct and or order the DCI to undertake the forensic examination of the impugned documents.

20. This case was filed in the year 2020 and the matter was fixed for pre-trial directions on numerous occasions. Thereafter, the case was set down for hearing on 22.07.2022 and 25.5.2023 and the plaintiff closed her case on 26.2.2024. Thereafter, the matter was fixed for defence hearing on 3.7.2024 but the hearing did not proceed on that date or subsequent dates. Thereafter, the 1st Defendant filed the present application.
21. Section 107 of the *Evidence Act* deals with the burden of proof in any case, and it is clear that the same lies with the party who desires any court to give judgment as to any legal right or liability, and it is for that party to show that the facts which he/she alleges his/her case depends upon exist. This is known as the legal burden.
22. In the leading Text Book; The Halbury's Laws of England, 4th Edition, volume 17, at paras 13 and 14, it is stated:-

“The legal burden is the burden of proof which remains constant throughout a trial; is the burden of establishing the facts and contentions which will support a party's case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose.

14. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied.

In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.”

23. As the issues herein are highly contested, the legal burden is discharged by way of evidence with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. From the very beginning, the parties herein must have known that the matter of the validity of the documents in question would be at the core of the dispute. It was therefore upto each party to the case to adduce evidence in support of their respective cases.
24. In our system of adversarial litigation, the court performs the role of an umpire. It does not have an inquisitorial function. It is my view therefore that the court should not descend into the arena of conflict by looking for evidence for parties in respect of a contested issue. That ought to be left for the parties themselves to decide. While it is worth noting that the jurisdiction of the court is unlimited as to what and when orders may be issued, the court must however exercise caution especially when the orders sought may prejudice one party such as the plaintiff herein who has already testified and closed her case. If the 1st Defendant was of the view that the documents in question ought to have been subjected to forensic examination, it is my considered view that the application could have been made at the earliest opportunity for grant of the necessary orders at the pre-trial stage before the plaintiff testified and closed her case. In any case, nothing could have stopped the 1st Defendant from making a report to the DCI which, being an independent constitutional body, could have acted without an order from the court. In conclusion therefore, I hold the view that the orders sought in the application herein at this late stage of the proceedings are not merited and the same cannot be granted.
25. The upshot is that the Notice of motion dated 29th October, 2025 is devoid of merit and the same is hereby dismissed with costs to the plaintiff.



26. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 30TH DAY OF APRIL, 2026 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of:-

Mr. Wainaina for the 1st Defendant.

No appearance for Mr. Kibii for the Plaintiff.

No appearance for Dr. Chebii for the 2nd Defendant.

Court Assistant - Laban.

