



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC CASE NO. 448 OF 2017**

**BENSON            NZIOKA            MWANZIA            .....**  
**.....PLAINTIFF**

**VERSUS**

**MUTISO    WAMBUA    KAUMBA    .....**  
**DEFENDANT**

**RULING**

1. In this matter, both parties testified, closed their cases, and filed their respective submissions, and the case was reserved for judgment today; however, this court is constrained to render a ruling rather than a judgment for the reasons that one of its sacrosanct callings is to ensure that it carries out substantive justice as envisaged by **Section 3A** of the **Civil Procedure Act**.
2. This provision confers on this court wide inherent powers to make such orders as may be necessary to achieve the ends of justice, including the summoning of public officers to obtain

evidence. In addition, **Section 173 (1)** of the **Evidence Act** gives this court wide latitude in obtaining evidence before it renders its final determination. It can exercise such powers *suo moto* and may order the production of any document. This provision of law states as follows: -

***“A judge or magistrate may, in order to discover or to obtain proper evidence, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact whether or not it is otherwise admissible; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to object to any such question or order, nor, without leave of the court, to cross-examine the witness upon any answer given in reply to any such question:***

***Provided that judgment shall be based only upon facts which are otherwise admissible and which have been duly proved.”*** Emphasis added.

3. Further, under **Section 38** of the **Evidence Act**, public documents tendered by an official in his official capacity are admissible in their own right. This provision provides as follows: -

***“An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself admissible”***

4. Lastly, **Section 22(b)** of the **Civil Procedure Act** confers on this court the authority to summon persons whose attendance is required to give evidence or produce documents. **See *Manchester Outfitters Ltd vs Pravin Galot 4 others [2021] eKLR.***
5. In this case, having considered the evidence tendered, including copies of the title document and various official searches, it has become necessary to summon the relevant land registrar for the locality where the suit property is located as an independent witness for the purpose of producing copies of its records relating to the suit property, including records of the parcel file and greencard.
6. For the reasons stated above and pursuant to the provisions of law and judicial precedent cited, it would be prudent for the Land Registrar, as the custodian of public documents on land registration, to tender these documents. Since these public

documents are admissible as of right, if parties so desire, they will be at liberty to cross-examine the Land Registrar on them. Consequently, this court hereby issues the following orders: -

- a) That within 14 days hereof, the defendant do extract a witness summons for purposes of service upon the relevant Land Registrar of where land parcel no. Mbiuni/Ulaani/654 is situated for the purposes of producing copies of all records on this property, including the parcel file and green card.***
- b) That within 21 days hereof, this witness summons, together with this ruling and the orders herein, be served by the defendant upon the relevant Land Registrar of where land parcel no. Mbiuni/Ulaani/654 is situated.***
- c) That a hearing date shall be given for purposes of producing these documents.***
- d) That liberty shall be given to the parties herein to cross-examine the Land Registrar.***

It is so ordered.

**Delivered and Dated at Machakos this 28<sup>th</sup> day of April, 2026.**

**HON. A. Y. KOROSS  
JUDGE  
28.04.2026**

**Ruling delivered virtually through Microsoft Teams Video  
Conferencing Platform**

In the presence of;

Ms. Kanja Court Assistant

Mr. Mwendwa for plaintiff.

Miss Mwangi for Mr. Muli for defendant.