



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 338 OF 2014

PAUL NDIRANGU MBUGUA & 85 OTHERS.....PLAINTIFFS

VERSUS

THE MINISTRY OF LANDS & 59 OTHERSDEFENDANTS

RULING

1. When this matter came up for further defence hearing on 17th July 2019, Francis Ngugi Githua (DW1) sought to produce as exhibits, copies of certain documents which had earlier on been marked for identification by the defence. The documents were: a list showing the names of the plaintiffs, their initial plots and their new plots (DMFI 3); demand letter from Gordon Ogolla Advocates dated 3rd December 2012 (DMFI 9A); letter from Director of Land Adjudication and Settlement dated 31st December 2012(DMFI 9B); title for plot number 142 (DMFI 5) and title for plot number 93 (DMFI 8).

2. Mr Karei, learned counsel for the plaintiffs objected to the production of all these documents by DW1 on the ground that the documents were copies public documents but had not been certified as required by the provisions of **Sections 68 (2) (c) and 80** of the **Evidence Act**. He further argued that DW1 is neither the maker of the documents nor a public officer from the relevant government offices which could vouch for the documents. He added that the plaintiffs would be prejudiced if the documents were produced by DW1 since the witness could not be interrogated on their contents. He relied on the case of **Hezekiah Oira v Patrick Quarcoo [2017] eKLR**. He also submitted that DMFI 5 and DMFI 8 are not signed by any official and that the 1st to 3rd defendants having given up their right to call witnesses, they should not be allowed to introduce documents irregularly.

3. In response Mr Opar, learned counsel for the 4th to 60th defendants argued that the documents are certified by the respective offices and therefore meet the criteria under **section 68 (2) (c)** of the **Evidence Act**. He added that the plaintiffs will not suffer any prejudice since the documents were included in the 4th to 60th defendants' bundle of documents which was served a long time ago. Citing **sections 1A, 1B and 3A** of the **Civil Procedure Act**, he urged the court to allow production of the documents so as to facilitate justice and to avoid technicalities.

4. On his part, Mr Ondieki counsel for the 1st to 3rd defendants supported Mr Opar's position arguing that the overriding objective of the court should be enhanced when interpreting the rules.

5. I have considered the objection and the submissions. The term "public document" is defined at **Section 79** of the **Evidence Act** as follows:

79. Distinction between public and private documents

(1). The following documents are public documents–

(a) documents forming the acts or records of the acts–

(i) of the sovereign authority; or

(ii) of official bodies and tribunals; or

(iii) of public officers, legislative, judicial or executive, whether of Kenya or of any other country;

(b) public records kept in Kenya of private documents.

(2) All documents other than public documents are private.

6. I have looked at the documents in issue. They are all copies. Save for DMFI 9A (demand letter from Gordon Ogolla Advocates dated 3rd December 2012), they all fall under the category of public documents. DMFI 9A is a private document. To the extent that the objection is premised on the general requirements for production of public documents, it is not sustainable in so far as DMFI 9A is concerned and it is dismissed to that extent.

7. The objection by the plaintiffs is that the documents are copies of public documents which have not been certified as required by the provisions of **sections 68 (2) (c) and 80** of the **Evidence Act**. **Section 80** provides for the manner in which public documents are to be certified. It states:

80. Certified copies of public documents

(1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who by the ordinary course of official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section.

8. A perusal of DMFI 3 shows that although it bears the stamp of the District Land Adjudication & Settlement Officer, there is no statement that it is a true copy of the said document and the name of the officer who signed the purported certification is not given. DMFI 9B, DMFI 5 and DMFI 8 have no certification stamp or seal at all. The documents do not satisfy the provisions of **Section 80** of the Act. To that extent, the objection is well founded.

9. In view of the foregoing, I make the following orders:

- a) As regards DMFI 9A, the objection is dismissed.
- b) As regards DMFI 3, DMFI 9B, DMFI 5 and DMFI 8, the objection is upheld.
- c) Costs shall be in the cause.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 26th day of September 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Kipruto holding brief for Mr Karei for the plaintiffs

No appearance for the 1st, 2nd and 3rd defendants

Mr Opar for the 4th to 60th defendants

Court Assistants: Beatrice & Lotkomoi