



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 17 OF 2014**

**RICHARD TOROITICH.....PLAINTIFF**

**VERSUS**

**MIKE K. LELMET**

**ELISHEBA C. LELMET .....DEFENDANTS**

**PAULINE J. LELMET**

**ESTHER J. LELMET (*suing as administrators of the estate of***

***WILLIAM CHERUIYOT LELMET*)**

**R U L I N G (1)**

1. The copy of the agreement dated 2/4/2003 is objected to as obviously it is not an original. It is the rule that primary evidence must, except in certain specified exception in **Section 35 of Cap 80**, be relied on in proceedings. I find that one of the exceptions is where the production of secondary evidence has been sought after a basis has been paid for its intended production. In those circumstances the court may depending on the circumstances of the case admit a copy of such evidence. The plaintiff began by explaining that the file containing the original agreement was lost while he was travelling from Mombasa where he works, and he has not been able to trace that file. There is also the averment that the copies of the same document have been relied on in these proceedings before this hearing without any demur on the part of the defendants.

2. It is the opinion of this court that much time would be spent trying to locate the said document for its production in court. I find that it is a replica of what was filed alongside the plaint on 31/1/2014. Looking at the statement of Mike Kiptoo Lelmet filed in this case, on 24/4/2014 I find there to be no challenge to the existence of the said agreement; what there is is the allegation that consideration failed in respect of the agreement.

3. I therefore exercise my discretion and admit a copy of the said agreement as evidence in this case to be marked as P.Exhibit 1.

Dated, signed and delivered at Kitale on this 8<sup>th</sup> day of **February, 2018**.

**MWANGI NJOROGE**

**JUDGE**

**COURT**

Ruling read in open court in the presence of the parties and their counsel.

Court Assistant - Isabellah.

**MWANGI NJOROGE**

**JUDGE**

**8/2/2018**