



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. LELMETDEFENDANTS

PAULINE J. LELMET

ESTHER J. LELMET (*suing as administrators*)

of the estate of WILLIAM CHERUIYOT LELMET)

R U L I N G (2)

1. Objection has been raised to the stating of what the deceased said when he was alive. The plaintiff and the deceased William Cheruiyot Lelmet admittedly contracted over the suit land and were in communication. The evidence of what the deceased stated is relevant to these proceedings. The only impossibility is that he cannot be called as a witness or for cross examination as he is now deceased. There are exceptions to the rule against hearsay as admitted by Prof. Sifuna.

2. I find that the agreement that the parties made made it possible for them to be in communication with one another. The evidence of what the deceased said is to be taken only as a face of that "saying" and not as the gospel truth. The reality here is that the plaintiff's evidence is subject to cross examination and as long as it is relevant and directly linked to the matters in issue in the suit, it is admissible subject to such verification. It may also provide certain explanations that this court does not have.

3. For those reasons I overrule the objection and order that the said evidence shall be tendered.

Hearing to proceed.

Dated, signed and delivered at Kitale on this 8th 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