

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 148 OF 2015

ESTATE OF THE LATE JACKSON LOMERI LOMACHAR (represented by

FLORENCE NASAMBU KHAEMBA and

ELIZABETH CHEMAKAL JACKSON.....PLAINTIFFS

VERSUS

SELINA CHELIMO JACKSON.....DEFENDANT

RULING

1. The agreements dated 31/8/1998 and 1/9/1998 are proposed to be produced in the form of copies. The basis has been laid for the production of copies in that it is alleged that the originals are in the hands of the defendant, not as a person who holds them in her own right but as an administrator of the deceased's estate. The distinction is drawn that where she holds them in that capacity rather than in her own capacity as a party signatory to the document, then the copies can be produced as evidence.

2. I have considered this objection. It is true that the defendant was not a party named in the documents whose copies are sought to be produced. Neither is it denied that she was in possession of the originals thereof; the contention that stands out is that she was not issued with a notice to produce. I find that a proper basis having been laid, and the defendant not being a party to the said documents as a signatory, and the documents being said to be held on behalf of the deceased's estate by her as an administrator, it is proper to admit the said copies of the said documents as evidence.

3. Accordingly they are hereby admitted as:-

P. Exhibit 2 Agreement of 1/9/1998

P. Exhibit 3 Agreement of 4/11/1998

P. Exhibit 4 Agreement of 31/8/1998

The objection is therefore overruled. Hearing to proceed.

Dated, signed and delivered at Kitale on this 19th day of March, 2018.

MWANGI NJOROGE

JUDGE