



Kipkemboi & 4 others v Commissioner of Lands & 7 others (Environment and Land Case Civil Suit 924 of 2012) [2024] KEELC 422 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 422 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 924 OF 2012
LN MBUGUA, J
JANUARY 31, 2024**

BETWEEN

**DAVID KIPKEMBOI 1ST PETITIONER
JOSEPHINE MOINDI 2ND PETITIONER
DAVID KAMUNYA RUNO 3RD PETITIONER
SINGUO HOLDINGS LIMITED 4TH PETITIONER
TIMOTHY ONDIEKI 5TH PETITIONER**

AND

**COMMISSIONER OF LANDS 1ST RESPONDENT
REGISTRAR OF TITLES 2ND RESPONDENT
DIRECTOR OF SURVEYS 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT
MICROTECH ACCESSORIES LIMITED 5TH RESPONDENT
BANGAL TRADING LIMITED 6TH RESPONDENT
INVESTMENT CO. LTD 7TH RESPONDENT
MOKOWE TRADERS LIMITED 8TH RESPONDENT**

RULING

1. PW2 was in the process of producing 3 documents in his affidavit of 11.9.2018 as exhibits 16,17 and 18 when various objects were raised. By the time of writing this ruling, the petitioner had abandoned the production of exhibit 18. The ruling hence relates to production of exhibit 16 and 17. It is averred



that the documents being referred to are not the annexures that are at page 321 'A' as the document at the aforementioned page is for David Kipkemboi. It is also averred that the documents don't have annexure stamp.

2. Counsel for the petitioner contends that PW2 is producing his affidavits as his oral evidence hence the heading of the affidavits is a misnomer and that the affidavit can be treated as his statement while the annexures are his exhibits.
3. I have keenly perused paragraph 4 in the affidavit of 11.9.2018 where PW2 states "I now produce a copy of the said registered grant marked 'TO 1'. The grant in question is the one at page 321 "A" which is however not marked "T01". Nevertheless, the Grant No. mentioned is one and the same; that is Grant No. 105312. There is therefore no ambiguity as to what document is being cross referenced at paragraph 4 of the said affidavit.
4. As for the document marked "TO2", the same is so marked at page 325 as Grant No I.R. 105310.
5. In the case of *Alexander Khamisi Mwimi v. Independent Electoral and Boundaries Commission & 2 others* (2018) eKLR, the question of the Rules of Procedure vs Substantive Justice were discussed at length where it was stated that the infraction complained of must go to the root of the dispute that is before the court if the said rules of procedure are to prevail.
6. In the case at hand, it is clear in the body of the affidavit in question that the witness is producing the two grants. The same have been availed. In the circumstances, the objections raised by defendants are dismissed. The two grants at page 321 'A' and page 328 are produced as exhibits 16 and 17.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Munyua for Petitioner

Allan Kamau for 1st - 4th Respondents

Mr. Cohen Amanya and M/s Hadijah for 5th, 6th and 8th Respondents

Mrs Ahomo holding brief for Mr. Issah for 7th Respondent

Court Assistant: Eddel

