



**REPUBLIC OF KENYA**

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

**THIKA LAW COURTS**

**ELC CASE NO.36 OF 2017**

**(FORMERLY NAIROBI CIVIL SUIT NO.1736 OF 2000)**

**NGOIGWA COMPANY LIMITED..... PLAINTIFF/APPLICANT**

**-VERSUS-**

**DORCAS WANJIKU IKINU.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff herein intended to call two witnesses to support its case. However, it was alleged that the 2<sup>nd</sup> witness **Rachel Wanja Murira**, who had recorded her witness statement earlier is now deceased having died on **26<sup>th</sup> August 2017**. A Death Certificate was produced by her daughter **Jane Waithira Murira** who confirmed that indeed her mother died on **26<sup>th</sup> August 2017** and was buried at **Gatuanyaga village**. She also confirmed that her mother was one of the **Director of Ngoingwa Co. Ltd**, the Plaintiff herein.

The Plaintiff's advocate applied for the statement of said **Racheal Wanja Murira** (deceased) to be produced as exhibit and later adopted as evidence by PW1. However, the Defence Advocate objected to that application on the basis that he will not have an opportunity to cross-examine the said witness.

The Court has considered **Section 33** of the **Evidence Act** and it is

evident that statement of deceased person can be produced in several

instances. For our case the relevant **subsection** is **(b)** which states that:-

**“When the Statement was made by such person in the ordinary course of business...”.**

It was alleged that the said **Rachel Wanja Murira** (now deceased) was one of the **Directors of Ngoingwa Co. Ltd**, the Plaintiff herein. She recorded her statement in reference to her ordinary course of business and her involvement in the impugned transaction between the Plaintiff and the Defendant herein. The said **Racheal Wanja Murira** is indeed deceased as her Death Certificate was produced in court.

The Plaintiff has therefore laid the basis of why the said witness cannot be availed in court to testify. The Court finds that the statement of **Racheal Wanja Murira**, is a statement of facts and therefore admissible. The Court allows its production and further finds that the Defendant will not be prejudiced at all because she will have an opportunity to puncture the said statement during the submissions stage.

As provided by **Section 3A** of the **Civil Procedure Act**, the necessary order herein is to allow the production of the witness statement of **Racheal Wanja Murira**, who is now deceased in accordance with **Section 33** of the **Evidence Act**.

It is so ordered.

**Dated, Signed and Delivered at Thika this 25<sup>th</sup> day of June 2018.**

**L. GACHERU**

**JUDGE**