

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 278 OF 2017

CHARLES MUKA ANYANGAPLAINTIFF/RESPONDENT

VERSUS

NYANGWESO OMUMANI ALIAS

PETER NYANGWESO OMUMANI S/O OMANI.....DEFENDANT/APPLICANT

RULING

The application is dated 12th April 2018 and is brought under Section 1, 3 and 3A and 50 of the Civil Procedure seeking the following orders;

1. This honourable court be pleased to compel the director forensic documents examiner to produce the black book forwarded to them on the 16th day of January, 2014.
2. This honourable court be pleased to compel the director forensic documents examiner to avail examination report forthwith.
3. Costs of this application be provided for.

The applicant submitted that on or about the 2nd day of December, 2013, this court released to his then counsels on record DEx 2 for purposes of verification of signature in preparation of his defence case. That DEX 2 was a black book that had been produced in court by the plaintiff. That on or about the 16th day of January, 2014, the said black book and his specimen signatures were delivered to the Director Forensic documents Examiner vide forwarding letter dated 13th day of January, 2014 (annexed is a copy marked "NO. 1"). That on or about the 12th day of March, 2015, his counsel then on record wrote to him and copied to the Director of Forensic Document Examiner (annexed is a copy of the letter marked "NO. 2."). That on or about the 25th day of May, 2015, his counsel on record wrote another letter to the Directors of forensic documents Examiner (annexed is a copy marked "NO. 3"). That despite the correspondences from his then counsel on record, there was no response forthcoming from the Director Forensic documents Examiner. That he has severally and numerous times financed trips to the office of Director Forensic documents Examiner's offices but neither report nor the black book has been released to him. That the laxity in the release of the black book and the report has caused a very serious delay in finalization of this matter. The respondent did not oppose the application and left it to court to decide.

This court has considered the application and the submissions herein. It is brought on grounds that on or about the 2nd day of December, 2013, this court released to the defence counsels DEx2 for purposes of verification of signatures. On or about the 16th day of January, 2014, the said DEx 2 which was a black book and specimen signatures were delivered to the director Forensic Documents Examiner. Several and numerous trips to Director Forensic documents Examiner have never realized any fruits in obtaining the report nor return of the black book. On or about the 25/5/2015, the defence counsels then on record addressed the Director Forensic documents Examiner over the pending examination report and release of the black box. The delay in release of the examination report and the black book has occasioned a serious delay in finalization of this case. I find that it is the defence which requested to take the documents to the examiner and hence I see no reasons to compel the witness to come to court. The applicants should have made an oral application for summons to issue. I find this application has no merit and I dismiss the same with costs. Summons to issue to the director forensic to attend court on a date to be taken by the parties.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 10TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE