



Yegon & 2 others (Suing as the administrators of Nehemiah Chepyator Chebiegon (Deceased)) v Tanui & 4 others (Environment & Land Case E42 of 2021) [2024] KEELC 182 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELC 182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E42 OF 2021
MAO ODENY, J
JANUARY 25, 2024**

BETWEEN

**JOASH K YEGON 1ST PLAINTIFF
CHRISTOPHER KC CHEBIEGON 2ND PLAINTIFF
JIMMY KIPROP YEGON 3RD PLAINTIFF
SUING AS THE ADMINISTRATORS OF NEHEMIAH CHEPYATOR
CHEBIEGON (DECEASED)**

AND

**ISAIAH KIPRUTO TANUI 1ST DEFENDANT
MOSES ROTICH 2ND DEFENDANT
DISTRICT LAND SURVEYOR ELDAMA RAVINE 3RD DEFENDANT
DISTRICT LAND REGISTRAR KOIBATEK 4TH DEFENDANT
DIRECTOR OF SURVEYS 5TH DEFENDANT**

RULING

1. This ruling is in respect of a Notice of Motion dated 9th June 2023 by the plaintiff/Applicants seeking the following orders:
 - a. Spent
 - b. That the Honorable court be pleased to issue orders directed to the Director of Land Adjudication and Settlement, Ardhi House to certify as the true copy of the original the Map Perkerra Scheme, Sabatia Settlement Scheme for LR No. 9863 issued in the year 1963.



- c. That the Honorable court be pleased to issue orders directed to the Ravine Settlement Office to certify as the true copies of the original the following documents:
 - i. Letter dated the 3rd April, 1964 from the Settlement Officer.
 - ii. Letter dated the 12th April, 1964 from the District Agricultural Officer.
 - iii. Letter dated 24th April, 1964 from the Ministry of Lands and Settlement.
 - iv. Letter dated 26th May, 1964 from the Ministry of Lands and Settlement.
 - v. Letter dated the 20th April, 1964 from the Settlement Officer Sabatia.
 - vi. Letter dated 6th February, 1968 from the Ministry of Lands and Settlement.
 - vii. Letter dated 19th March, 1968 from Settlement Office Sabatia Complex.
 - viii. Letter dated the 23rd February, 2016 from the Ministry of Lands, Housing and Urban Development.
 - ix. That costs of the application be in the cause.
2. The application was supported by the annexed affidavit of Joash K. Yegon sworn on 9th June 2023 where he deponed that the map referred to in prayer 2 of the application is a public document which the plaintiffs are seeking certification. He stated that they sent a letter dated 10th May 2023 to the Director of Survey whereby they sought certification of various documents including the map referred to in prayer 2 but the Director of Surveys advised them that the document was from the Director of Land Adjudication and Settlement who did not also certify it.
3. The Applicant also deponed that the documents referred to in prayer 3 of the application were also public documents that were sent to the Director of Land Adjudication and Settlement vide a letter dated 10th May 2023 for certification but only one letter was certified leaving the rest uncertified hence the application for the court's intervention for certification.
4. The Applicant further deponed that in an affidavit sworn of 9th June 2023, and annexed a copy of the letter dated 9th June, 2023 from the Director of Land Adjudication and Settlement in response to their advocates' letter dated 10th May, 2023 reference No. AW/CIV/11/2021.
5. It was the Applicant's evidence that in 2021 the plaintiffs and their families faced a lot of hostility when they tried to access some documents at the Eldama Ravine Land Offices, Settlement Office and the Survey Office hence they are not likely to get the documents certified as they sided with the defendants.
6. The 3rd, 4th and 5th defendants filed their grounds of opposition on 16th October 2023 and stated that if referenced documents were very critical, then the applicant ought to have joined the Land Adjudication and Settlement Department in this suit in order for them to produce the said documents or call them as a witnesses.

Plaintiffs' Submissions

7. Counsel for the plaintiffs relied on Sections 80 and 81 of the [Evidence Act](#), the case of [Hezekiah Oira vs Patrick Quarcoo](#) [2017] eKLR and submitted that despite requesting for certification of the documents listed under prayer 2 and 3 of the application under consideration, the relevant departments have failed to certify the same.



8. With regards the grounds of opposition filed by the 3rd, 4th and 5th defendants, counsel Submitted that by issuing the orders sought, the court will not be assisting the plaintiffs to prove their case because the certified documents will have to be produced by a witness who can be examined.
9. Counsel further submitted that it was not necessary to sue the Director of Land Adjudication and Settlement and submitted that this court had already issued orders on 25th April, 2023 that were extended on 18th May 2023. Counsel relied on the case of *Padfield & others vs Minister of Agriculture, Fisheries and Food & others* [1968] AC 997 at 1006 and sought that the plaintiff's application be allowed as prayed.

1st and 2nd Defendant's Submissions

10. Counsel submitted that the plaintiffs have not annexed a copy of the original map for Perkerra Scheme Sabatia Settlement Scheme for LR No. 9863 that was issued in 1963, therefore they could not tell whether the document was a public document or not.
11. It was counsel's submissions that from the response of the Ministry of Lands, there was no admission that the map was in the possession of the Director and therefore he should not be compelled to certify that which he does not have.
12. Counsel further submitted that the plaintiffs want the Eldama Ravine Settlement Office to certify various documents but they have not demonstrated whether they submitted the said documents to the Eldama Ravine Settlement Office as required under Section 80 of the *Evidence Act*.
13. Counsel stated that the Plaintiffs should apply for summons for the relevant officers to produce the said documents instead of compelling them to certify them and urged the court to dismiss the application the costs.

3rd 4th and 5th Defendants' Submissions

14. Counsel submitted on whether the 5th defendant should be compelled to certify the documents stated in prayer No. 2 and relied on Sections 66 and 80 of the *Evidence Act* and submitted that it is the duty of the 3rd, 4th and 5th defendants to certify the copies of documents that are in their custody.
15. Counsel stated that the plaintiffs ought to have gotten the said documents from the Land Adjudication and Settlement Officer who is the custodian of the said documents and sought that the application be dismissed with costs.

Analysis and Determination

16. The issues for determination are whether the Director of Land Adjudication and Settlement should be compelled to certify the original Maps for Perkerra Scheme, Sabatia Settlement Scheme LR No. 9863 issued in the year 1963 as true copies of the original, and whether the Ravine Settlement Officer should be compelled to certify the documents listed under prayer 3 of the application.
17. Section 80 of the *Evidence Act* provides as follows:
 - (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer



is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

- (2) Any officer who by the ordinary course of official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section.”
18. The Applicants annexed to their supporting affidavit the letter dated 10th May 2023 addressed to the Director of Surveys seeking for certification of various maps and Registry Index Map sheets by Arusei & Co. Advocates and as similar letter to the Director of Land Adjudication and Settlement requesting for certification of various letters and documents.
19. In their further affidavit, the plaintiffs annexed a letter dated 9th June, 2023 that was written by Purity Mwangi for the Director Directorate of Land Adjudication & Settlement making reference to the letter dated 10th May 2023 indicating that they were only able to certify one document as the true copy of the original.
20. She further stated that the other documents were correspondences between various field offices and their office was not included in the documentation and advised the plaintiffs’ counsel to contact the Sub County Land Adjudication and Settlement Officer – Eldama Ravine where the parcel file was available and request for certification of the same.
21. The documents requested for certification emanated from the land offices and the letter dated 9th June 2023 confirms that the same were from their offices and their field office. There is a central office of Land Adjudication and Settlement, which can facilitate the certification of the documents named by the Applicant. It is the Settlement Office that knows the field officers or office that signed the letters and the same can be verified and certified.
22. In the case of *Hezekiah Oira v Patrick Quarcoo* (2017) eKLR (*supra*) the Court stated that:
- “.....The law provides that public documents should be produced by the makers in which case the person producing the same should have the copies properly certified and or/sealed. This is the law as per section 80 of the *evidence Act* which provides that “. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.....”
23. I find that the application has merit and is therefore allowed as prayed.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JANUARY 2024.

M. A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure

