



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 567 OF 2012

JULIA WANJIRU KIIRU (Suing as the administratrix of the

**Estate of the late JECINTA WANGUI KEIRU.....
PLAINTIFF**

VERSUS

**DORIS OCHIENG OLUOCH.....1ST
DEFENDANT**

**R. O. OKELLO.....2ND
DEFENDANT**

**GEORGE L. A. BENGO.....3RD
DEFENDANT**

**DIRECTOR DEPARTMENT OF LAND ADJUDICATION & SETTLEMENT.....
.....4TH DEFENDANT**

**SETTLEMENT FUND TRUSTEES.....5TH
DEFENDANT**

**THE HON. ATTORNEY GENERAL.....6TH
DEFENDANT**

RULING

Mr. Njuguna prays that the photocopy of the receipt named as PMFI.5 be produced as evidence in court. The receipt was issued in Nairobi. The original is list. *Mr. Njuguna* relies on section 68 of the Law of Evident Act. *Mr. Omwenga* opposes the application and states that the plaintiff shall have filed a notice under section 69 of the Evidence Act. The proper procedure should be followed according to *Mr. Omwenga*.

Mr. Odongo relies on section 68 1(a) and 69 of the Evidence Act, thus, notice to produce was not issued. Section 66 of the Evidence Act provides that security evidence includes:

INSERT

Section 67 provides that documents must be provided by privy evidence except in the cases hereinafter mentioned.

Section 68 which provides for proof of documents by security evidence provides that security evidence may be given of the existence, condition or contention of a document in the following cases:

INSERT

The applicant has demonstrated that the original receipt is lost and has produced a police abstract and the O.B. extract for 29.10.2015. Section 68(a) is not applicable, therefore, section 69 is not applicable as notice to produce is required only in respect of the provisions of 68(1)(a).

The upshot of the above is that the plaintiff is allowed to rely on PMFI 5 to be produced in accordance with the law and that PW1 to be recalled to produce the document.

DATED AND DELIVERED AT ELDORET THIS 14TH DAY OF MARCH, 2017.

A. OMBWAYO

JUDGE