



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC NO.393 OF 2009

1. JENNIFER JOY PLEASANCE.....PLAINTIFF

VERSUS

1. JEPHASON MAINA KAROKI.....1ST DEFENDANT

2. ROBERT CYRIAN LUCAS.....2ND DEFENDANT

3. JOHANA MARIA LUCAS.....3RD DEFENDANT

4. SUBRANY WAMBOI YUSUF.....4TH DEFENDANT

5. DISTRICT LAND REGISTRAR KWALE.....5TH DEFENDANT

6. THE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. This is a ruling on the objection raised by Mr. Ndegwa, counsel for the plaintiff against the production by DW1 of a letter of consent dated 4th February 2009 from the Chairman, Msambweni Land Control Board.

2. The objection was based on the grounds that the letter of consent was issued to Jephason Maina Kariuki, the 1st defendant, and not DW1 who is also the 4th defendant. According to Mr. Ndegwa, Section 35 (1) of the Evidence Act only allowed the maker or someone who had personal knowledge of the matters dealt with by the document may produce it, unless it can be proved that the maker is dead or cannot be found. He insisted that only the maker or person with personal knowledge may be called to produce the document but not DW1 who never appeared at the Msambweni Land Control Board.

3. Mr. Omollo, learned counsel for the 2nd, 3rd and 4th defendants submitted that the Msambweni Land Control Board is a public body and the consent letter is an entry in public records, hence admissible under Section 38 of the Evidence Act. However, Mr. Ndegwa differed and maintained that the letter of consent that is sought to be produced is not the record, register or book. According to Mr. Ndegwa, the register is at the Msambweni Land Control Board office and is the one that ought to be produced.

4. The Letter of Consent is issued by the Land Control Board and signed by the Board Chairman and issued to the parties who applied for it and it becomes their document and any one of them can produce it

in court as evidence. In this case the Letter of Consent was issued to the 1st defendant but DW1 is also listed as one of the parties in whose favour the consent was issued. He cannot therefore be shut out from producing the Letter of Consent on the ground that he was not the maker or had no personal knowledge.

5. The plaintiff's counsel also alluded that the other reason for objecting to the document being produced by DW1 is because they were doubtful about the existence of the 1st defendant. This is not a valid reason as the 1st defendant remains a party to the suit and it is the plaintiff who brought the suit against the 1st defendant. If the defendant never existed, the plaintiff had no business suing a non-existent person.

6. It is my view that the document can be produced but can be challenged during cross-examination and in the submissions of the parties.

Furthermore, admitting documents in evidence does not mean that they will be taken as gospel truth by the court especially where there is evidence to the contrary.

7. I find that the objection has no merit and I dismiss it accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 11TH OF MAY 2017

C. YANO

JUDGE