



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

CIVIL CASE NO. 15 OF 2017

RAPHAEL MUGWANJA WARARI.....PLAINTIFF

VERSUS

OL KEJUADO COUNTY COUNCIL1ST DEFENDANT

JACOB MWANTO WANGORA.....2ND DEFENDANT

DISTRICT LAND REGISTRAR3RD DEFENDANT

RULING

What is before Court is an objection regarding the competency of PW2 ANTHONY MACHARIA KARIUKI a retired Police Officer to testify in this suit. Mr. Agina who is Counsel for the 2nd Defendant objected to PW2 giving his testimony claiming he was testifying on evidence he came across while a Police Officer and this offends the provisions of the Government Secrets Act which bars former government officers from selling information they acquired by virtue of being a civil servant. He submitted that if PW2 is allowed to give evidence in this matter, the Court will be opening a flood gate for other civil servants to sell information they came across while working. He stated that his client was objecting to PW2's testimony because he came across the information while investigating the matter.

Ms. Fatuma who was acting for the 3rd Defendant supported Mr. Agina's objection.

Mr. Chenge who was counsel for the Plaintiff submitted that PW2 was a competent witness and nothing stops the Court from summoning the District Land Registrar as a government official to testify in this matter. He stated that Mr. Agina has failed to indicate the provisions of the Law that he is relying on to object to PW2's testimony. The witness statements is as a result of the matters in question and denying PW2's testimony is not in the interest of justice.

Mr. Agina reiterated that the Act states that matter that came into one's knowledge when one was a civil servant and does not say secrets. He said a Land's Officer can be called to provide evidence in court but through the Ministry. He said if government wanted PW2's testimony, he could be a witness for the 3rd Defendant and not the Plaintiff's. He submitted that he is not a competent witness as he wants to bring in information which has not been sanctioned by the Police.

Analysis and Determination

The main issue in question is the competency of PW2 a retired police officer to testify as a witness in the case at hand which he had investigated while still in employment.

I note in the Nairobi Chief Magistrates' Court Criminal Case No. 810 of 2007, where the 2nd Defendant was charged, PW2 testified in court when he was already retired. This case was heard and determined on 24th March, 2010 and thus renders the proceedings and judgement therein as public documents.

There are no provisions in the Official Secrets Act that bar a former police officer from providing evidence of information he came across during investigations.

Further Section 4 of the Access to Information Act stipulates as follows:

(1) Subject to this Act and any other written law, every citizen has the right of access to information held by—

(a) the State; and

(b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.

(3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.

(4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6

Section 6 of this Act further provides limitation on disclosure of the information but an ex police officer providing evidence he came across during investigation does not fall within this ambit.

I take judicial notice of the fact that the proceedings in the Criminal Case are part of the Plaintiff's records herein and I find that the Plaintiff has a right to call PW2 who already gave evidence in the Nairobi Chief Magistrate's Court Criminal Case No. 810 of 2007 which was heard and determined. His evidence is not a secret and there is no provision in the Access to information Act, Official Secrets Act and the Evidence Act barring him from providing the said information in court, in a matter he has investigated whilst a Police Officer.

In the circumstances I dismiss the objection barring PW2 from testifying.

I make no orders as to costs.

Dated signed and delivered in open court at Kajiado this 20th day of September, 2017.

CHRISTINE OCHIENG

JUDGE