



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 87 OF 2012

KYALO TUTA (*Suing as the legal representative of the
Estate of WANZA TUTA – DECEASED*).....**PLAINTIFF**

VERSUS

TUTUS WAMBUA NGOLOMA.....**1ST DEFENDANT**

DOMINIC MUTUNE NTHENGE.....**2ND DEFENDANT**

MWEA FARMERS CO. LTD.....**3RD DEFENDANT**

RULING

1. When this matter came up for hearing, the Defendants’ advocate objected to the calling of Olive Musyoka and Joseph Mulei as Plaintiff’s witnesses.
2. According to the Defendants’ counsel, the said witnesses are Directors of the 3rd Defendant, and cannot therefore testify against the 3rd Defendant.
3. The Plaintiff’s advocate’s position is that the said persons are competent witnesses and can testify as against the company.
4. Although there was no evidence placed before me to show that indeed the said witnesses are the 3rd Defendant’s Director, I shall address the issue of whether the said witnesses can testify against the 3rd Defendant even if they are Directors in the said company.
5. According to the principles expounded in the well known case of *Saloman vs. Saloman & Co. Ltd (1897) AC 22 HL*, a company is an independent person with rights and liabilities appropriate to itself.
6. The decision in *Saloman (supra)* protects shareholders’ private assets and provides a method of limitation of liability which is acceptable in company law, with various exceptions. The various exceptions to the rule allows for the “*lifting of the veil*” of the company in certain circumstances.
7. The Plaintiff has averred in the Plaint that she bought shares in the 3rd Defendant in 1984 and was entitled to 30 acres of land; that the 3rd Defendant allocated her land to the 1st Defendant and that the former officials of the company has refuted the claims of the 1st Defendant.

8. From the pleadings, the witnesses that the Plaintiff is calling, who are either the Directors of the 3rd Defendant or former Directors, is meant to assist the court in establishing what actually transpired in respect to the shares that the Plaintiff claims she bought from the 3rd Defendant.

9. Directors of a company are not amongst the people who are not competent witnesses pursuant to the provisions of Chapter V of the Evidence Act.

10. Indeed, the Defendants' counsel did not cite any law which provides that a Director of a company is not competent to be a witness against the company (*See the case of Clay City Developers Limited vs. The Chief Magistrate's Court & Others [2014] eKLR*).

11. In the circumstances, the former or current Directors of the 3rd Defendant are competent and compellable witnesses in this matter and can testify in the matter.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE