



REPUBLIC OF KENYA

IN THE ENVIRIONEMNT & LAND COURT

AT MOMBASA

ELC CASE NO. 414 OF 1996

MOHAMED BWANA BWANNADI.....1ST PLAINTIFF

ABDULRAZAK KHALIFA.....2ND PLAINTIFF

-VERSUS-

ABDULRAHMAN KHATOR & 9 OTHERS.....DEFENDANTS

RULING

1. Mr. Mogaka for the 8th Defendant objects to the production of the judgment as it has no title or number of the case.
2. Mr. S. M. Kimani contends that a certified document is a proper document. That the same is titled and no part of it is missing. He prays that the court dismisses the objection.
3. I have considered the submissions of counsel and the relevant provisions of the law. The said judgment is certified as a true copy of the original by the Deputy Registrar.
4. Mr. Mogaka has not objected to the production of the decree which was extracted from the said judgment.
5. Section 35(2) of the Evidence Act states

“In an Civil proceedings, the court may at any state of the proceedings, having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused order that such statement as is mentioned in subsection (1) of this section shall be admissible or may, without any such order having been made, admit such a statement in evidence;

a) Notwithstanding that the maker of the statement is available but is not a witness.

b) Notwithstanding that the original document is not produced, in in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or the court may approve as the case may be.”

6. From the foregoing, I am of the view that the Deputy Registrar certified the judgment because such a judgment indeed existed. No material has been placed before the court for the court to doubt the existence of such a judgment.
7. The court takes judicial notice of the fact that it may not be easy to trace the physical file. The Deputy Registrar must have referred to a register of some sorts in order to certify the judgement.

For these reasons, I find Mr. Mogaka’s objection to be without merit and the same is overuled.

The certified copy of the judgment is proper and the same can be produced.

It is so ordered.

DATED, SIGNED and DELIVERED at Mombasa on the 19th day of December, 2017.

L. KOMINGOI

JUDGE

19/12/2017