



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO 144 OF 09

CANNON ASSURANCE (K) LTD.....APPLICANT/PLAINTIFF

VERSES

1. ALI HAMADI MWAGUDE

2. FAIZA WANJIKU MAINA

3. MOHEMED OMAR IBRAHIM

4. LAND REGISTRAR KWALW

5. THE HON. ATTORNEY GENERAL.....DEFENDANTS/RESPONDENTS

RULING

1. When PW1 was giving evidence-in-chief the witness stated that she was relying on all the copies of the documents filed by the plaintiff and which the originals have been misplaced and or lost and wanted to produce the said documents as exhibits. Counsel for the defendants raised objection to the production of the first four documents in the plaintiff's supplementary list of documents filed on 13th January 2011 and submitted that the plaintiff has not satisfied the provisions of Section 68 (1) of the Evidence Act. Counsel submitted that the witness (PW1) was not the maker of the documents and no sufficient basis had been laid to warrant the production of the said documents which were photocopies and had not been certified. They submitted that the documents were inadmissible.

2. Counsel for the plaintiff urged me to allow PW1 to produce the said documents on the ground that the originals had been misplaced and/or lost.

3. I have now considered the rival submissions made by both the counsel for the plaintiff and for the defendants. Having done so I take the following view of the matter. All documents objected to are photocopies. They constitute what the Evidence Act refers to as secondary evidence under Section 66 thereof. Secondary evidence is admissible under section 68 of the Evidence Act. Subsection 1(c) provides:

“Secondary evidence may be given of the existence, condition or contents of a document in the following cases

(c) when the original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in a reasonable

time.”

From the above provision of the law, it appears therefore that the witness can produce the photocopies. However, it is not every photocopy that may be produced. The requirements of Section 66 of the Evidence Act must first be complied with.

+Section 66 of the Evidence Act provides:

“66 Secondary evidence includes-

- a. Certified copies given under the provisions hereinafter contained;
- b. Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- c. Copies made from or compared with the original;
- d. Counterparts of documents as against the parties who did not execute them;
- e. Oral accounts of the contents of a document given by some person who has himself seen it.”

4. In my humble view copies would be admissible if they are certified. Photocopies made from copies would require two certificates. One that they have been made from copies and that the copies have been compared with the original. I have perused the four documents. They are photocopies that have not been certified. They are therefore not admissible. PW1 has merely stated that the original documents have been misplaced and/or lost. The plaintiff has not demonstrated or shown evidence of such loss by, for instance, the production of a police abstract. I am not satisfied that the explanation given is sufficient. In the premises, I sustain the defendants objection to the production of the said documents by PW1

Ruling dated, signed and delivered at Mombasa this 6th day of December 2017

C. YANO

JUDGE