



REPUBLIC OF KENYA



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County Council of Nandi (Kiborgok Tea Estate Limited) v Ngeya (Civil Appeal 41 of 2021) [2025] KEHC 644 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEHC 644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL 41 OF 2021
JN KAMAU, J
JANUARY 30, 2025**

BETWEEN

COUNTY COUNCIL OF NANDI (KIBORGOK TEA ESTATE LIMITED) APPELLANT

AND

JULIA KHADIOLI NGEYA RESPONDENT

(Being an appeal from the Ruling of Hon J.K. Ng'arng'ar (SRM) delivered at Vihiga in Principal Magistrate's Court Case No 63 of 2009 on 10th June 2014)

JUDGMENT

Introduction

1. In his decision of 10th June 2014, the Learned Trial Magistrate, Hon J.K. Ng'arng'ar, Senior Resident Magistrate, dismissed the Appellant's objection to the production of a treatment chit by one of the Respondent's Witnesses namely, by Everlyne Koi (hereinafter referred to as "PW 2").
2. Being aggrieved by the said decision, on 7th July 2014, the Appellant filed a Memorandum of Appeal of even date at High Court Kakamega. It relied on seven (7) grounds of appeal. Musyoka J transferred the file herein from Kakamega High Court to High Court Vihiga on 18th March 2021.
3. The Appellant's Written Submissions were dated 4th July 2019 and filed on 22nd January 2021 while those of the Respondent were dated 4th February 2020 and filed on 5th February 2020. The Judgment herein is based on the said Written Submissions which both the Appellant and the Respondent herein relied upon in their entirety.



Legal Analysis

4. The Appeal herein emanated from a ruling of the Trial Court that was delivered as the trial was going on. There was, therefore, no evidence to analyse.
5. Having looked at the grounds of Appeal and the respective parties' Written Submissions, it appeared to this court that the only issue that had been placed before it for determination was whether the Learned Trial Magistrate erred in having dismissed the Appellant's objection on the production of a treatment chit by PW 2. Grounds of Appeal Nos (1), (2), (3), (4), (5), (6) and (7) were, therefore, dealt with together as they were all related.
6. The Appellant submitted that PW 2 was its employee. It was emphatic that it was the County Government of Nandi and not Kaimosi Tea Estate. It acknowledged that PW 2 was the maker of the treatment chit but asserted that having left Kaimosi Tea Dispensary seven (7) years earlier, she could not testify on behalf of the institution.
7. It asserted that the Respondent was not injured in the course of her employment and that it was therefore necessary that the said treatment chit be authenticated by the source because she intended to link it to her. It, therefore, faulted the Trial Court for having found that PW 2 could produce the said treatment chit.
8. On its part, the Respondent submitted that PW 2 produced the treatment chit not on behalf of the institution but rather as the maker of the document. She confirmed that she was the one who treated her. She relied on Section 35(1)(a)(ii) of the *Evidence Act* which permitted the makers of documents to tender the same in evidence. She further submitted that the Appellant was at liberty to cross-examine her on the said document. She, therefore, urged this court to dismiss the Appeal herein.
9. Notably, Section 35(1)(a)(ii) of the *Evidence Act* Cap 80 (Laws of Kenya) stipulates as follows:-
 - a. if the maker of the statement either—
 - i. had personal knowledge of the matters dealt with by the statement; or
 - ii. where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters;
 - b. if the maker of the statement is called as a witness in the proceedings:
10. The best evidence was that which was given by the person who had first-hand knowledge of the facts and/or was the original maker of a document. PW 1 was the maker of the treatment chit that she was tendering in court. She treated the Respondent and recorded her medical notes in the treatment chit. It was immaterial that she had left the institution that treated the Respondent herein seven (7) years



before the matter came up for hearing in court. She had been called to testify and was well within the confines of Section 35(1)(b) of the *Evidence Act*.

11. The Appellant had an opportunity to cross-examine her on the contents of the treatment chit. Her role as a witness was not to connect the Respondent to the Appellant. Rather, it was to give evidence of how she treated the Respondent herein.
12. It was, therefore, the view of this court that the Appellant's submissions on the dismissal of its objection fell by the wayside and consequently, Grounds of Appeal Nos (1), (2), (3), (4), (5), (6) and (7) were not merited and the same be and are hereby dismissed.
13. It was unfortunate that this matter had been pending in the court system since 2014 and was yet to be concluded. This was an issue that ought not to have derailed the hearing of the lower court matter because the Appellant still had a chance to appeal the decision of the Trial Court on merit after the conclusion of the case.
14. Be that as it may, this court acknowledged the fact that the Appellant had a right to a fair hearing to have its dispute determined by a competent court as was stipulated in Article 50 (1) of *the Constitution* of Kenya, 2010. It could not be blamed for the delay that had been occasioned in the determination of the Appeal herein as it was evident that the lower court file was not availed to this court until 11th October 2024. Without belabouring the point, there was a need for the lower court to hear the matter on merit and expeditiously.

Disposition

15. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Appeal that was dated 7th July 2014 and filed on 7th July 2014 was not merited and it is hereby dismissed. The Appellant will bear the Respondent's costs of the Appeal herein.
16. It is hereby directed that the lower court file be returned to Hamisi Law Courts forthwith and the matter be mentioned before the Head of Station on 10th February 2025 for further orders and/or directions focusing on having this matter heard expeditiously. It was imperative that the matter be finalised within the shortest time possible as it had been pending in the court system for the last eleven (11) years for the hearing of an appeal on a preliminary issue, which was a travesty of justice to both parties.
17. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF JANUARY 2025

J. KAMAU

JUDGE

