



**Kapiti Investments Company Limited v District Land Registrar, Machakos & 5 others  
(Environment & Land Case 5 of 2014) [2023] KEELC 915 (KLR) (20 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 915 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 5 OF 2014  
CA OCHIENG, J  
FEBRUARY 20, 2023**

**BETWEEN**

**KAPITI INVESTMENTS COMPANY LIMITED ..... PLAINTIFF**

**AND**

**DISTRICT LAND REGISTRAR, MACHAKOS ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JOSIAH KIOKO NDUNDA ..... 5<sup>TH</sup> DEFENDANT**

**NAHASHON KYALO NDUNDA ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before me for determination is a Notice of Objection raised on September 20, 2022 by Counsel for the Plaintiff objecting to the production of a report dated the January 28, 2022 by DW1 Bernard Wanjau who is a Finger Print Assistant I, based in the department dealing with National Registration. He insists that the document sought to be produced relied on computer generated documents. He relied on section 106(B) of the *Evidence Act* to support his objection. The 5<sup>th</sup> Defendant's Counsel in opposition to the objection insisted that the objection did not fall within the ambit of the *Evidence Act*. Further, that the maker of the document sought to be produced was in court. He averred that the document is in its original form. The Counsel for the 1<sup>st</sup> to 4<sup>th</sup> defendants did not object to the



production of the said document. In that respect, I wish to rely on section 106B of the [Evidence Act](#) which stipulates thus:

- “(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper; stored, recorded or copied on optical or electro-magnetic media produced by a computer (hereinafter referred to as “computer output”) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.
- (2) The conditions mentioned in subsection (1), in respect of a computer output, are the following-
  - a. the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
  - b. during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
  - c. throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
  - d. the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
- (3) .....
- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following –
  - a. identifying the electronic record containing the statement and describing the manner in which it was produced;
  - b. giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
  - c. dealing with any matters to which conditions mentioned in subsection (2) relate; and
  - d. purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate),



shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.”

2. I note the report sought to be produced relied on evidence from a data base held by the National Registration Bureau which records were used to confirm the authenticity of the ID of one Job N Muthika. Section 106(B) of the [Evidence Act](#) cannot supersede other provisions of the [Evidence Act](#) which allows the maker of a document to produce it. I note in this instance, it is the maker of the document who sought to produce it. I have read Section 106(2) (a)-(d) and I opine that the evidence, the witness sought to produce is an output from their data base regularly used and contains information which the said witness is privy to, in the line of his duty. Further, the maker made reference to their records and prepared an independent report which he can be cross examined on. From a reading of the legal provisions I have cited above, I opine that the evidence sought to be produced is not a computer generated document as per the provisions of Section 106B of the [Evidence Act](#).
3. In the circumstance, I find the objection unmerited and will over rule it.

I direct the matter to proceed for hearing.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

