



# Testifying as a fact witness and the legal elements of fraud

Presentation by:

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# Fact witness



## ➤ Black's Law Dictionary

*In general, one who, being present, personally sees or perceives a thing; a beholder, spectator, or eyewitness.*

*One who is called to testify before a court... One who testifies to what he has seen, heard, or otherwise observed.*



# Trial Process



**Examination in Chief**

**Cross examination**

**Re- examination**

# Legal elements of Fraud



## **Black's Law Dictionary;**

*A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.*

## **Points that stand out;**

- ✓ Standard of burden of proof;
- ✓ Admission of evidence;



## **S145 of the Evidence Act**

- ✓ The person who desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist
- ✓ The burden of proof lies on that person who would fail if no evidence at all were given on either side
- ✓ The person who desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist

# Burden of Proof



## Balance of probability

*a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.*

## Beyond reasonable doubt

*if there is a doubt in your mind, and that doubt is reasonable, the accused must not be convicted.*

# Burden of Proof in Fraud Cases



## **Emfill Ltd vs Registrar of Titles Mombasa and 2 others (2014eklr)**

*Allegations of fraud are allegations of a serious matter normally required to be strictly pleaded and provided on a higher standard than the ordinary standard of a balance of probabilities*

# Extent of admissibility



## **S 42 Cap 80 of the Laws of Kenya**

When any statement of which evidence is given forms part of a longer statement, or of a conversation, or of an isolated document, or is contained in a document which forms part of a book or of a connected series of letters or papers, evidence shall be given of so much and no more of such longer statement, or of such conversation, document, book or series, as the court considers necessary in the particular case to a full understanding of the nature and effect of the statement, and of the circumstances in which it was made

# Counterclaim



*This is where one asserts claims in response of another.*

Person X is fired by the company.

He sues the company for wrongful dismissal

The company may counterclaim the suit citing fraud.



Thank You

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