



**Kimani v Mwangi & 2 others (Civil Appeal E003 of 2021)  
[2022] KEHC 10889 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10889 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E003 OF 2021  
MM KASANGO, J  
MAY 26, 2022**

**BETWEEN**

**VERONICAH WAIRIMU KIMANI ..... APPELLANT**

**AND**

**DAVID KARANJA MWANGI ..... 1<sup>ST</sup> RESPONDENT**

**PLATINUM CREDIT LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL TRANSPORT & SAFETY AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal from the judgment of the Chief Magistrate's Court at Thika  
(G. Omodho, SRM) on 25th July 2018 in Thika CMCC NO. 551 OF 2012)*

**RULING**

1. Veronicah Wairimu Kimani (Veronicah) filed a case before the Kikuyu Senior Principal Magistrate's Court. Her case before that court is that David Karanja Mwangi (David) without lawful authority transferred to himself Veronicah's motor vehicle registration number KCF 710F and obtained a loan from Platinum Credit Limited (Platinum) using the subject vehicle as security for that loan. Veronicah presented the prayers in that case for injunction against David, Platinum and National Transport and Safety Authority (NTSA) to restrain them from repossessing the subject motor vehicle; for order setting aside and cancelling the transfer of the subject motor vehicle; and mandatory injunction compelling NTSA to transfer the subject motor vehicle to Veronicah.
2. Before the Kikuyu Magistrates' Court, Veronicah filed an interlocutory application seeking injunction to restrain the auctioneers instructed by Platinum from attaching the subject motor vehicle. The Kikuyu Magistrate's Court by a Ruling delivered on December 17, 2020 dismissed the interlocutory injunction application. That dismissal aggrieved Veronicah. She has filed this appeal against that dismissal.



3. Veronicah has filed an application dated April 8, 2021 which is under consideration. She seeks an order that she be permitted to adduce additional evidence and a supplementary record of appeal.
4. Veronicah seeks to adduce evidence of a charge sheet whereby David is charged with the offence of forgery contrary to Section 349 of the *Penal Code*. Veronicah also wishes to adduce extra evidence of a handwritten expert report.
5. Veronicah deponed that she was unable to avail the extra evidence because after she filed a complaint at the police station the investigations were commenced and it was not until February, 2021 when David was charged with a criminal offence that the charge sheet and handwritten expert report were availed to her.
6. The application is opposed by Platinum. Platinum termed the application misconceived incompetent and bad in law; that the application is an afterthought; and that Veronicah is trying to “patch up” her case by seeking to adduce extra evidence.

### **ANALYSIS**

7. I will begin my analysis by considering the governing principle, prescribed by the Supreme Court, in the case *Mohamed Abide Mohamed v Ahmed Abdullahi Mohamed & 3 others* [2018] eKLR thus:-

“We therefore lay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows:-

- (a) The additional evidence must be directly relevant to the matter before the Court and be in the interest of Justice;
- (b) It must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;
- (c) It is shown that it could not have been obtained with reasonable diligence for use at the trial, was within the knowledge of, or could not have been produced at the time of the suit or Petition by the Party seeking to adduce the additional evidence;
- (d) Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has direct bearing on the main issue in the suit;
- (e) The evidence must be credible in the sense that it is capable of belief;
- (f) The additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;
- (g) Whether a Party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;
- (h) Whether the additional evidence discloses a strong prima facie case of wilful deception of the Court;
- (i) The Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence;
- (j) The Court must find the further evidence needful;



- (k) A Party who has been unsuccessful at the trial must not seek to adduce additional evidence to make a fresh case on appeal, fill up the Omissions or patch up the weak points in his/her case;
- (l) The Court will consider the proportionality and prejudice of allowing the additional evidence. This requires the Court to assess the balance between the significance of the additional evidence, on the one hand and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.”

8. Although Platinum argued that Veronicah’s application was an afterthought, I confirm that the date reflected on the charge sheet, that is, the February 11, 2021 vindicates the deposition of Veronicah that both the charge sheet and the handwritten expert report were supplied in February, 2021. This was almost a month after the Kikuyu Magistrate’s court delivered its Ruling which is the subject of this appeal. Veronicah evidently couldn’t have produced those documents before the Kikuyu Magistrates court. Further, I find the extra evidence is directly related to the appeal before this Court. Veronicah cannot be said to be attempting to make a fresh case by adducing the extra evidence. The application in my view is merited.

#### **DETERMINATION**

9. I make the following order:-

- a. The appellant is granted leave to adduce extra evidence. Such extra evidence, that is the charge sheet and the handwritten expert report shall be filed in a supplementary record of appeal within 14 days from this date hereof.
- b. The respondents shall within 14 days of being served file, if need be, an affidavit in response to the extra evidence adduced.
- c. The costs of the notice of motion application dated 8<sup>th</sup> April, 2021 shall abide with the outcome of this appeal.

10. Orders accordingly.

**RULING DATED AND DELIVERED AT KIAMBU THIS 26<sup>TH</sup> DAY OF MAY, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Mourice

For Appellant: - Mr. Njuru

For 1<sup>st</sup> Respondent: - No appearance

For 2<sup>nd</sup> Respondent: -Ms. Chibet

For 3<sup>rd</sup> Respondent: - No appearance

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**

