



**Kigoi v Kabiru (Environment and Land Appeal E011 of 2023)  
[2025] KEELC 3396 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3396 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E011 OF 2023**

**MN GICHERU, J**

**APRIL 29, 2025**

**BETWEEN**

**THOMAS IRUNGU KIGOI ..... APPLICANT**

**AND**

**JULIUS MAINA KABIRU ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 26-4-2024. The motion which is by the Appellant is brought under Sections 78 of the [Civil Procedure Act](#), 2A and 3A of the [Civil Procedure Act](#), Orders 42 rules 27 and 28 and 5 rule 1 of the [Civil Procedure Rules](#).

The motion seeks the following orders.

1. The Appellant herein be allowed to produce additional evidence.
  2. The Appellant be allowed to file a supplementary record of appeal.
  3. That the costs of this application be provided for.
2. The motion is based on five grounds and is supported by an affidavit sworn by the Appellant which has several annexures. The gist of the above material is as follows. Firstly, the Appellant's case was dismissed on the grounds that he was not able to prove the sale by auction through which the land was acquired. The auction documents which were served in the year 1996 were not within his knowledge but he has recently acquired them. Secondly, the Appellant has evidence to prove that he issued notices of eviction to the Respondent. Thirdly, the Appellant will suffer prejudice if this evidence is not adduced while the Respondent will suffer no prejudice. Fourthly, the appeal raises issues of fact that can only be rebutted by adducing additional evidence failing which the appeal will be determined unjustly. Finally, if this motion is not allowed, substantial justice will not be achieved.



3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 20-5-24 in which he replies as follows. Firstly, the Appellant has not shown that the new evidence he is seeking to adduce was not readily available during the trial. Secondly, the said evidence is an afterthought meant to fill gaps in a case which has no chance of success on appeal. Thirdly, the production of the new evidence will have no impact on the appeal because no practical action was taken until after the lapse of over twelve(12) years thus the doctrine of adverse possession still applies. Finally, the alterations in the annexed eviction notices create doubt on their authenticity.

For the above and other reasons, the Respondent prays for the dismissal of the Appellant's motion.

4. Counsel for the parties filed written submissions dated 25-9-2024 and 20-1-2025 respectively. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit, the annexures, the submissions and the law cited therein. I find that the motion has merit and I allow it for the following reasons.

Firstly, though an application to adduce evidence at the hearing of an appeal is rare, it is nevertheless provided for in Section 78(1) (d) of the [Civil Procedure Act](#) and Order 42 rules 27 and 28 of the [Civil Procedure Rules](#).

Secondly, land being such an emotive and valuable resource, a party to a land dispute should not be locked out from adducing evidence that could assist the court in resolving the dispute fairly.

Thirdly, the Respondent will be given adequate opportunity to rebut the new evidence through cross-examination and filing of new evidence. Notice of motion dated 26-4-2024 is allowed. Costs in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29<sup>TH</sup> DAY OF APRIL , 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel – Mr. Njoroge

Respondent's Counsel -

