



**Mwanzi & another (Both t/a Kayole Hekima Academy Educational Center) v Mwangi & 4 others
(Environment & Land Case 126 of 2011) [2022] KEELC 2714 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 126 OF 2011**

**LN MBUGUA, J
MAY 12, 2022**

BETWEEN

**AGGREY ATSIUAVULA MWANZI 1ST PLAINTIFF
SOFIA NABANGALA NDOLO 2ND PLAINTIFF
BOTH T/A KAYOLE HEKIMA ACADEMY EDUCATIONAL CENTER**

AND

**BEN JOSEPH MWANGI 1ST DEFENDANT
JUSTUS WANJALA (SUED AS REPRESENTATIVE OF LIGHT HOUSE
CHURCH) 2ND DEFENDANT
NAIROBI CITY COUNTY 3RD DEFENDANT
SAMUEL NDUMBE NJOROGE 4TH DEFENDANT
BROOKFIELD ACADEMY 5TH DEFENDANT**

RULING

1. Before me is a notice of motion application dated November 15, 2021 where Plaintiffs are seeking leave to re-open their case and that they be allowed to adduce further evidence and produce the list of documents dated October 15, 2021.
2. The Plaintiffs contend that the additional evidence they wish to adduce is a copy of the title which was not in their custody as at the time PW1 testified. That the failure to produce the said document in time was not intentional.
3. The 1st Defendant has opposed the application via a replying affidavit dated January 20, 2022 where he contends that the case has dragged on for a very longtime and that no reasonable explanation has been advanced as to why the title was not processed from year 2011.



4. I have considered all the issues raised herein. In the Court of Appeal case of *Kuwindia Ruringa Co. Ltd v. Kuwindia Holdings Ltd & 13 others* (2011) eKLR, the court held that the power of the court to receive further evidence is discretionary, which discretion is exercised on three broad principles namely: (i) The Applicant must show that the evidence sought to be adduced could not have been obtained with reasonable diligence for use at the trial (ii) The evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; (iii) The evidence must be apparently credible, although it need not be incontrovertible.
5. The situation at hand is one where PW1 testified way back on October 9, 2018 and was cross examined on 23.9.2019, when Plaintiffs' case appears to have been closed. On February 3, 2020, the Applicant withdrew case against 2nd Defendant. On the same date, 1st Defendant gave his testimony and his case was closed. The matter was scheduled for hearing on July 7, 2020 but Plaintiff was absent.
6. The court gave another date of February 3, 2021 whereby again, the Plaintiff who was absent was given a second chance and the case was put off to June 9, 2021. Come the date of June 9, 2021 and the Plaintiff who was in person requested for time to look for an advocate. The case was put off to 10.11.2021. This time round, the Plaintiff had a new counsel who had filed a fresh list of documents dated October 15, 2021.
7. From the word go, the Plaintiffs had never intimated to the court that they were pursuing crucial documents with lands ministry. They have also not demonstrated the efforts they had been making to get the said documents.
8. In that regard, I find that the application is not merited and is dismissed with costs to the 1st Defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Macharia holding brief for Mungai for the Plaintiff

M/s Mutinda holding brief for Ayieko for the 1st Defendant

Ogada holding brief for Prof. Ojienda for the 3rd Defendants

Court Assistant: June Nafula

