



**Tonui & 2 others v Prairie Co-op Society Ltd & another (Environment and Land Case 127 of 2014) [2025] KEELC 5082 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5082 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE 127 OF 2014**

**MAO ODENY, J**

**JULY 8, 2025**

**BETWEEN**

**PHILIP KIBET TONUUI ..... 1<sup>ST</sup> PLAINTIFF**

**KIMANI HINGA MUNIU ..... 2<sup>ND</sup> PLAINTIFF**

**HEZEKIA KIMANI KARIUKI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**PRAIRIE CO-OP SOCIETY LTD ..... 1<sup>ST</sup> DEFENDANT**

**LAWRENCE MAINA MWANGI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the 2<sup>nd</sup> Defendant's/Applicant's Notice of Motion application dated 28<sup>th</sup> April, 2025 which seeks the following orders:
  - a. Spent
  - b. That this Honourable Court be pleased to give the Applicant herein leave to file his further List of Documents and Bundle of documents out of time.
  - c. That upon issuance of previous order this Honourable Court be pleased to admit the Draft List of documents and accompanying bundle of documents attached herewith as duly filed and part of the Court record.
  - d. That costs of this application be borne by the Respondents.
2. The application is supported by the annexed affidavit of Lawrence Maina Mwangi, the Applicant, sworn on 28<sup>th</sup> April, 2025 where he deponed that a perusal of the court record shows that various documents including maps are crucial for the just and fair determination of this suit yet they are not



part of the court record. It was his deposition that he now wishes to file the said documents to allow him to effectively defend the matter.

3. The 1<sup>st</sup> Defendant filed Grounds of Opposition dated 8<sup>th</sup> May, 2025 stating that pleadings are closed and on 5<sup>th</sup> December 2019, the court allowed the applicant to comply with Order 11 of the Civil Procedure Rules which he did and the current documents are already filed. The 1<sup>st</sup> Defendant deponed that the suit is part heard with three witnesses having testified. The 1<sup>st</sup> Defendant further deponed that the application is meant to adjourn the hearing of the case.

### **2<sup>nd</sup> Defendant/applicant's Submissions**

4. Counsel for the Applicant filed submissions dated 23<sup>rd</sup> May, 2023 and identified the issue for determination as to whether granting leave to file further documents out of time is merited. Counsel submitted that the Plaintiff has not objected to the filing and any alleged prejudice can be mitigated by recalling any necessary witness as directed by the court. Counsel submitted that the 1<sup>st</sup> Defendant will not suffer any prejudice.
5. Counsel relied on Articles 50 (1) and 159 (2) of *the Constitution* of Kenya and Sections 1A, 1B, 3, 3A and 95 of the *Civil Procedure Act*. Counsel also relied on the cases of Reg vs Gaming Board Ex Benalim 1970 2 QB 417, Githere vs Kimungu [1976-1985] EA 101, Philip Keipto Chemwolo & Another vs Augustine Kubende [1986] eKLR and Approtek Limited vs Ngotho & 2 others (Environment & Land Case No 36 of 2023 [2024] KEELC 4294 (KLR).

### **1<sup>st</sup> Defendant's Submissions**

6. Counsel for the 1<sup>st</sup> Defendant filed submissions dated 28<sup>th</sup> May, 2025 and submitted that the Applicant has not stated the reasons why he never filed the additional documents at the time of his defence. Counsel further submitted that the documents are already on record, except the ones marked 7 & 8 which have been wedged between the others.
7. It was counsel's submission that the two documents have no nexus to the dispute and that the Plaintiff gave evidence and never produced the same and the Land Administration Officer from Ardhi house produced the entire file relating to the portions in dispute and the two documents were not part of them. Counsel relied on the case of Mulu vs Total Kenya Plc Cause E629/2021 and urged the court to dismiss the application with costs.

### **Analysis And Determination**

8. The issues for determination are whether this court should grant the applicant leave to file a further List of Documents and Bundle of documents out of time and admit them as part of the Court Record. The court notes that the hearing of the matter has already commenced and it is the 1<sup>st</sup> Defendant's contention that the documents are already on record except the ones marked 7 and 8 which have been wedged between the others.
9. In the case of Raila Odinga & 5 Others v IEBC and 3 Others 2013 eKLR the Supreme Court stated that in situations where the court is faced with a scenario where it is to consider whether to admit or reject additional evidence filed outside the stipulated statutory timeliness as follows:

“The parties have a duty to ensure they comply with their respective time lines, and the court must adhere to its own. There must be a fair and level playing field so that no party or the court loses the time that he/she/it is entitled to, and no extra burden should be imposed on any party or the court as a result of omissions or characteristics which were foreseeable



or could have been avoided. The other issue the court must consider when exercising its discretion to allow a further affidavit is the nature, context of the new material intended to be provided and relied upon. If it is small or limited so that the other party is able to respond to it, then the court ought to be considerate, taking into account all aspects of the matter. However, if the new material is so substantial involving not only a further affidavit but massive additional evidence, so as to make it difficult or impossible for the other party to respond effectively, the court must act with abundant caution and care in the exercise of its discretion to grant leave for the filing of further affidavits and or admissions of additional evidence.”

10. The court has the discretion to either allow or reject such additional documents or evidence after the trial has commenced but the same has to be exercised judiciously where no prejudice will be caused to any party. The Applicant must disclose the nature and type of evidence sought to be introduced to enable the court to ascertain its relevance, admissibility and whether it will be prejudicial to the opposite party.
11. In the case of *Pinnacle Projects Limited v Presbyterian Church of East Africa, Ngong Parish & another* [2019] KEHC 9967 (KLR) the court held that:

“When considering the additional evidence in my view a careful inquiry by the court ought to be made into the nature of the evidence as to its relevance, materiality facts in issue, admissibility and the strength of the evidence sought to be introduced within the trial. Merely because the witness statement was not served during pre-trial conference and discovery period does not prevent the trial court to allow such further additional evidence to be taken on record and allowed to be challenged in accordance with law.”
12. Order 95 of the *Civil Procedure Act* empowers the court to enlarge time even though the period originally fixed may have lapsed. It states as follows:

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
13. In the case of *Nyambura v Mwangi & 3 others* [2025] KEELC 4882 (KLR), the court opined as follows at paragraph 11:

“It is trite that extension of time is a discretionary exercise of Court’s powers. Such discretion must be exercised judiciously and not whimsically. See the case of *Mbogo & another v Shah* [1968] 1 EA 93. This court being a neutral arbiter and also a shrine of justice, has a mandate to do justice to all parties and not to be too strictly bound by procedural technicalities and structures.”
14. The Parties acknowledge that the documents sought to be filed are already on record. In fact, the Plaintiff’s counsel is in support of the Application and it will not cause any prejudice to the Plaintiff. Counsel for the 1<sup>st</sup> Defendant is the one opposed to the Application, but does not clearly state what prejudice the same will cause her client. Counsel also submitted that the documents are already on record. If that is, the case then why would the 1<sup>st</sup> Defendant oppose what is already there?



15. The court is cognizant of the purpose of pre-trial directions, which is to help in the way proceedings are undertaken for the smooth administration of fair trial and justice without ambushing the other party. In Halsbury's Laws of England Volume 13 where it was stated as follows:

“The function of the discovery of documents is to provide the parties with relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to sit before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation.

16. It does not mean that the court will turn a blind eye to deserving cases where it is of the opinion that such additional evidence and documents will assist the court in coming up with a just decision. It is also not a blanket cheque where litigants take the court in circles by not adhering to set timelines and procedures therefore causing delays and backlogs. The court, as earlier stated has the discretion in such cases which must be applied or exercised judiciously

17. Having considered the application, the submission by counsel, I find that the application has merit and is therefore allowed in the following terms.

- a. The Applicant is hereby granted leave to file and serve his further List of Documents and Bundle of documents within 7 days.
- b. The Draft List of documents and accompanying bundle of documents attached to the application be deemed as duly filed upon payment of the requisite fees.
- c. Costs in the cause

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 8<sup>TH</sup> DAY OF JULY 2025.**

**M. A. ODENY**

**JUDGE**

