



**Iruki & another v Mangaara & 3 others (Environment and Land Appeal
E115 of 2021) [2024] KEELC 5087 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E115 OF 2021**

CK NZILI, J

JULY 3, 2024

BETWEEN

NAFTALY MWITI IRUKI 1ST APPELLANT

JULIUS MWONGERA NKIRITI 2ND APPELLANT

AND

KAIMBA MANGAARA 1ST RESPONDENT

THE DISTRICT LAND REGISTRAR 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. This appeal was admitted for hearing on 7.5.2024. Directions were issued to canvass the appeal through written submissions. A mention date to confirm compliance was fixed for 23.5.2024. Thereafter, counsel for the appellants filed a supplementary record of appeal dated 15.5.2024 incorporating the proceedings and judgment of the lower court.
2. When the matter came up for mention on 23.5.2024 counsel for the appellant told the court that he had filed a notice of motion dated 21.5.2024 seeking leave to adduce new evidence. The reasons given are that some documents were not availed to the trial court. In view of the said application, the court directed that the application be determined before a judgment date could be issued.
3. The additional evidence sought to be introduced includes a letter of allotment dated 12.5.1992, letters of allotment compensation dated 20.6.1992 and 12.2.1997, and a report prepared by the Director of Land Administration. The appellants/applicants say that the documents are credible, not voluminous, and will not occasion any prejudice to the respondents, for they will have an opportunity to mount a response.



4. In the supporting affidavit of Naftally Mwiti Iruki, the 1st appellant/applicant sworn on 21.5.2024, he avers that he visited the 2nd respondent's lawyer's chambers on 17.5.2024 and noted that his file was voluminous since it contained documents he had never seen or were not in the file of his former lawyers. He then sought photocopies.
5. The appellant/applicant avers that the documents were beyond their reach and did not know of their existence until his fortunate visit to the 2nd respondent's office, yet they are of great assistance to the court in determining the appeal in a just manner. Though the application was served upon the respondents on 11.6.2024 and a return of service was filed, no replying affidavit has been filed to oppose the application.
6. The power to adduce new evidence at the appellate stage is governed by Section 78 of the Civil Procedure Act and Order 42 Rules 27, 28 & 29 of Civil Procedure Rules. The principles to consider were set out in Mohammed Abdi Mabamud vs Ahmed Abdullabi Mobamed & others (2018) eKLR and in AG vs Torino Enterprises Ltd (2019) eKLR as follows:
 - i. The additional evidence must be directly relevant to the matter and be in the interest of justice.
 - ii. It must be able to influence or impact upon the result of the verdict.
 - iii. It must be shown that it could not have been obtained with reasonable diligence for use at the trial or was not within the knowledge of, or could not have been produced at the trial.
 - iv. It should be likely to remove any vagueness or doubt over the case and must have a direct bearing on the central issue in the suit.
 - v. It must be credible.
 - vi. It must not be voluminous.
 - vii. Whether a party would have reasonably been aware of and procured, it is an essential consideration to ensure fairness and due process.
 - viii. It should disclose a strong prima facie case of willful deception of the court.
 - ix. It must be needful evidence.
 - x. A party who has lost must not seek to make a fresh case on appeal to fill up omissions or patch up the weak points in his case.
 - xi. Proportionality and prejudice to the opposite party must be considered.
7. In this application, the appellant/applicant have attached documents whose relevance their defense and the subject matter is unclear. The subject matter in the appeal is Parcel Meru Municipality Block II/697. The suit was filed in 2015. The applicant filed their statement of defense and list of documents dated 9.2.2018, attaching an allotment letter dated 24.11.1996 for Plot No. 147 in the name of Julius M'Nkiriti and a certificate of lease for Meru Municipality Block 11/697 dated 2.7.2014 to his name. Later on, he filed a further list of documents dated 14.10.2019. He later amended his defense dated 30.6.2020.
8. By an order dated 6.10.2020, the 1st appellant/applicant was allowed to file further documents among them a letter he produced as D. Exh No. (6) dated 25.6.1996, 6.5.1997 as D. Exh No. (7), D. Exh No. (3), letter of allotment dated 24.11.1995 a PDP map D. Exh No. (4), a cheque dated 29.5.1996.



9. The proposed documents in this application are not certified. Their authenticity and credibility are not evident. The nexus between Plot No. T147 and plot No. 147 Meru Municipality Block II/697 are lacking. The makers of the documents have attached no further witness statements to confirm their source. The documents predate both the suit and the acquisition of the suit land by the 1st appellant/applicant in 2013.
10. Therefore, with the use of due diligence, the 1st appellant/applicant would have traced the root of his title deed before registration in 2013 and 2015, after he was sued on 23.12.2015.
11. The evidence is not new or was not beyond the reach of the 1st appellant/applicant if he had been keen on time or at all. The application does not satisfy the parameters set in the cited case law. There has been an inordinate delay in applying for it. It is therefore dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 3RD DAY OF JULY, 2024

In presence of

C.A Kananu

Kabugu for the 1st respondent

Ng'entu for the applicant

HON. C K NZILI

JUDGE

