



**Microbit Systems Limited v Mandera County Governmet (Civil Suit E004 of 2021) [2025] KEHC 2388 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2388 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CIVIL SUIT E004 OF 2021  
JN ONYIEGO, J  
MARCH 6, 2025**

**BETWEEN**

**MICROBIT SYSTEMS LIMITED ..... PLAINTIFF**

**AND**

**MANDERA COUNTY GOVERMNET ..... DEFENDANT**

**RULING**

1. By a notice of motion dated 10-01-2025 brought pursuant to Section 3A of the CPA, order 9 rule 9 and order 51 rules 1 and 3 of the civil procedure rules, the applicant moved this court seeking orders to the effect that;
  - a. The court do arrest and or stay the delivery of the judgment scheduled for 20-02-2025
  - b. The court does reopen the plaintiff's case for purposes of production and admission into evidence the letter dated 29-Novemebr 2024 from Murgor and Murgor Advocates and 23-12-2024 from government printer
  - c. That the honourable court does summon one Julius N. Banga for purposes of production and admission into evidence, the letter dated 23-12-2024 on behalf of the government printer.
  - d. That the court do make any such order a s it may deem fit.
2. The application is anchored on the grounds set out on the face of it and further amplified by the content contained in the supporting affidavit sworn 10.01.2025 by Ali Hassan Apel. It was averred that pursuant to the defendant's denial through the testimony of Mr. Abdikadir Tache Mohamed and Mr. Ali Noor Aden maintaining that the LPO booklet containing the disputed LPO numbers 2450901 and 2450902 were not sourced by the government of Mandera from the government printer. The plaintiff through the firm of Murgor and Murgor did a letter dated 29-11-2024, to government printer seeking confirmation whether the disputed LPOS emanated from their office.



3. That in response to the said request, government printer confirmed through their letter dated 23-12-2024, that the booklets containing the disputed LPOS which forms the subject of the alleged breach of contract in this case were indeed ordered for by the Government of Mandera who collected the same on 11-12-2014 and receipt duly acknowledged by one BJ Duale.
4. That it amounts to perjury for the defendants to disown the LPOS which were used to procure goods from the plaintiff who executed its part of the bargain. It was deposed that, it in the best interest of justice that the court allows production of the said documents and testimony of the government printer official to ascertain the truth.
5. In response, the respondent filed a replying affidavit sworn by Mr. Abdikadir Tache Mohamed stating that before the court would allow such evidence, it should guard against any possible embarrassment; be satisfied that such new evidence was reasonably not within the knowledge of the applicant after exercising due diligence when the hearing was going on and that; that it is not intended to fill in gaps left during the hearing.
6. That allegation of forgery of the impugned LPOs was raised quite in advance when filing their defence hence the plaintiff had enough time to secure such information or evidence. He went further to state that such admission will prejudice the defendants' case. He maintained that the two LPOs were forged. That to allow the said evidence will amount to filling gaps by the applicants hence abuse of this court's process and unnecessary delay of the case determination.
7. During the hearing, Mr. Ouma for the applicant submitted orally. He basically reiterated the content contained on the face of the application and the supporting affidavit.
8. On their part, the respondents through the firm of Sheikh Shariff relied on the submissions dated 06-02-2025 basically adopting the content contained in the replying affidavit. It was surged that the applicant has not met the threshold on reopening a case to admit new evidence. It was counsel's submission that the application if allowed is likely to prejudice or embarrass the respondents; it is intended to fill in gaps and; no explanation was given why the same was not tendered at the earliest opportunity possible. To support that position, counsel referred the court to the case of Samuel Kiti Lewa v Housing Finance Co. of Kenya LTD & another [2015]e KLR.
9. I have considered the application herein and the response thereof. I have also considered parties oral and written submissions by the respondent. The gist of the application herein is a prayer to reopen the case to admit new evidence by the plaintiff / applicant.
10. The applicant is seeking to arrest delivery of the pending judgment in this case to enable it introduce what it refers to as new evidence which evidence was obtained after both parties had closed their cases and were awaiting delivery of judgment. Superior courts have time and again held that for a party to succeed in admission of new evidence after closure of the hearing of the case, he or she must prove that; the new evidence is not intended to fill in gaps; the new evidence could not have been obtained during or before the hearing even after exercise of due diligence; it is not intended to prejudice the opposite party; and that it is important in the interest of justice that the court exercises discretion in his favour.
11. In the case of Samuel Kiti (supra) the court (Kasango J as she then was) succinctly stated that;  

“The court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion the court should ensure that such re-opening does not embarrass or prejudice the opposite party. In that regard re-opening of a case should not



be allowed where it is intended to fill gaps in evidence. Also such prayer for re-opening of the case will be defeated by inordinate and unexplained delay”.

12. Similar position was held by the Supreme Court in Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamad & 3 others [2018] eKLR, where it was held that additional evidence was not meant to fill gaps in evidence or help a Plaintiff to make a fresh case on appeal but only because the evidence is needful.
13. In this case, the applicant stated that the evidence obtained was necessary to arrive at a just determination. The respondent maintains that the two disputed LPOs were forged. They however do not dispute the confirmation from government printer that they were sourced by their office. During the hearing, it was stated categorically that those LPOs were not accountable documents held in their office. They however stated that the documents were forged hence not authentic. Although the applicants did not explain why they did not secure the same evidence before the hearing upon exercise of due diligence, it was definitely not expected that LPOS’ existence as an accountable document ordered by the county government of Mandera would arise. In the circumstances therefore, the delay in securing the same after the hearing is understandable.
14. As to the question of filling gaps, it is indeed necessary and in the interest of justice that the truth be known without undue regard to technicalities pursuant to Art 159 (2)(d) of *the constitution*. On account whether the admission of such evidence would be prejudicial or embarrassing on the respondents, I do not think so. This is because, they will have an opportunity to cross examine the government printer official. In my view, the application having been filed without undue delay, there will be no harm in allowing the application an order which I exercise in the interest of justice.
15. In view of the holding the following orders shall abide;
  - a. That notice of motion dated 10th of January 2025 be and is hereby allowed as prayed.
  - b. That the pending judgment herein be and is hereby arrested and stayed until further orders.
  - c. That the application is allowed for the applicant to call one Julius Banga of government printer to produce necessary documents showing that the LPO booklets containing the disputed LPOS were indeed ordered for and received by the County government of Mandera as accountable document.
  - d. That the costs of this application be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**J. N. ONYIEGO**

**JUDGE**

