



Social Service League MP Shah Hospital v Mbombo & 2 others (Civil Appeal E1389 of 2023) [2025] KEHC 6646 (KLR) (19 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E1389 OF 2023**

**JM NANG'EA, J
MAY 19, 2025**

BETWEEN

SOCIAL SERVICE LEAGUE MP SHAH HOSPITAL APPELLANT

AND

ELIJA KAMAU MBOMBO 1ST RESPONDENT

ERIC AGBEKO 2ND RESPONDENT

EAGLE GROUP INTERNATIONAL 3RD RESPONDENT

(Being an appeal from Ruling and Order of Hon S.K Onjoro Mr. (PM) delivered on 21st September, 2023 in Milimani Chief Magistrate's Court's Civil Suit No. E4564 of 2022)

JUDGMENT

1. This Appeal arises from Ruling of the above Subordinate Court dated 21st September, 2023. The brief background to this appeal is that the Appellant had filed two applications, both dated 31st May 2023, wherein the first application sought leave of the court to join the personal representatives of the Estate of Pamela Naido and Jefferson Marshall as Defendants in the main suit filed in the lower court.
2. The second application was for the following reliefs:
 - i. That the Applicant be granted leave to file a supplementary list of documents after the close of pleadings to lodge minutes of the executive board meeting held on August 15, 2022 which reflects the authority to institute the suit and other ancillary matters, and to lodge stamped copies of the guarantees given by the Defendants (sic);
 - ii. That the Applicant be granted leave to add a witness and file additional witness statements after the Close of pleadings.



3. The applications were canvassed by way of written submissions. Upon considering the parties' arguments, the lower Court dismissed the two applications observing inter alia that the Appellant was seeking to patch up gaps in its case having found that there was no evidence that the documents in question were inadvertently left out.
4. Aggrieved by part of the said decision disallowing admission of the additional documents, the Appellant preferred this appeal through Memorandum of Appeal dated 14th December, 2023 on the following grounds:-
 - i. The learned Chief Magistrate erred in fact and in law when it refused to grant leave to lodge the stamped guarantees and the Company Resolution on the premise that the Appellant was seeking to fill the gaps, as even if that was the case, the Learned Chief Magistrate by considering this argument took into account matters that he shouldn't have when coming to his decision and in doing so arrived at a wrong conclusion (sic);
 - ii. The Learned Chief Magistrate erred in fact and in law when he refused to admit the Company Resolution as the present suit is still ongoing and has not yet been disposed of and thus lodging of the Company Resolution was a matter of form and technicality and the Court gave undue attention to the same in determining the application (sic);
 - iii. The Learned Chief Magistrate erred in fact and in law in refusing to grant leave for the admittance of the Company Resolution as the resolution does not affect the substantive nature of the suit nor does it affect the outcome of the suit and thus should have been allowed;
 - iv. The Learned Chief Magistrate erred in law and misdirected himself in law, when he refused to admit the Company Resolution as the Court of Appeal has set the precedent, which precedent is binding on the Magistrates' Court and which states that a company must be given the opportunity to get the company resolution at any point in the proceedings as to get authority and the same should not defeat the claim;
 - v. The Learned Chief Magistrate erred in fact and in law by not admitting the said documents as it is trite law that clients should not be punished for the mistakes of an advocate;
 - vi. The Learned Chief Magistrate erred in law and fact when he refused the admittance of the stamped guarantees as the unstamped guarantees have the same content as the stamped guarantees and thus by admitting the stamped guarantees, there would be no prejudice suffered by the Respondent nor would the same have taken up the Court's time as there was no need for additional cross-examination as the content of the documents is identical;
 - vii. The Learned Chief Magistrate erred in law when he refused the admittance of the stamped guarantees as stamping is encoded in law which law allows for opportunity to be given to litigants to have their documents stamped for the purpose of aligning themselves with the law and the same should not defeat a claim;
 - viii. The Learned Chief Magistrate erred in law and fact in not admitting the stamped documents as the same guarantees had already been lodged and form part of the Court record thus stamping of the same do not alter the guarantees nor negatively alter the outcome of the case of the Respondents (sic);
 - ix. The Learned Chief Magistrate erred in fact and law by refusing to admit the stamped documents and the Company Resolution, as the same decision is injudicious and would lead to miscarriage of justice, if the legitimate claim of the Appellant is defeated due to the technicality



of documents not being stamped and a Company Resolution being lodged at a later stage but during the hearing (sic).

- x. The Learned Chief Magistrate erred in fact and law by failing to take into account the relevant provisions of the law and the Court of Appeal decision that is binding on this Court and in so doing arrived at the wrong decision;
 - xi. The Learned Chief Magistrate misdirected himself in fact and law by failing to take into account the fact that if the said documents are not admitted, the Appellant claim can be defeated owing to a technicality thereby being extremely prejudicial to the Appellant and if the documents are admitted the same would not be disadvantageous or prejudicial to the Respondents at all (sic).
5. The Appellant thus prays that:-
- i. The Appeal be allowed and an order be made to the extent that the further documents that is the Stamped Guarantee and the Company Resolution be allowed to be lodged in Court as evidence (sic).
 - ii. In the result, the Ruling and order by the Learned Chief Magistrate be set aside.
 - iii. Costs of this Appeal be granted to the Appellant.
6. The Appeal was heard by way of written submissions.

Appellant's Submissions

7. Through Counsel, the Appellant submitted on these three issues it proposes for determination;
- i. Whether the Magistrate improperly considered irrelevant matters.
 - ii. Whether the Magistrate gave undue attention to procedural technicalities.
 - iii. Whether the Magistrate erred in disallowing leave to file additional documents.
8. Pertaining to the first issue, it was submitted that the additional documents were an integral part of the Appellant's case and directly relevant to the matters in dispute. Failure to admit these documents without consideration of their relevance and necessity to the ongoing proceedings constituted an error in the exercise of judicial discretion, according to the Appellant. The Court was referred to the case of *Republic vs Director of Public Prosecutions & another Ex-Parte Francis Wanguru Mwithukia & Another* [2017] eKLR in support of this submission.
9. The Appellant's advocates underscore that whether or not the Appellant was trying to fill in gaps in its case was not a relevant issue for the Court's consideration but rather any prejudice that could be occasioned to the respondents if the application was allowed.
10. On the second issue framed by the Appellant's advocates, it was submitted that judicial precedent supports the admission of essential documents at various stages of proceedings provided such admission does not cause undue prejudice. It was argued that Article 159(2)(d) of *the Constitution* emphasizes administration of justice without paying undue regard to procedural technicalities as amplified in the case of *Rozah Akinyi Buyu vs Independent Electoral and Boundaries Commission & 2 others* [2014] eKLR cited in Counsel submissions.
11. While drawing reference from judicial determinations in the cases of *Geoffrey Oguna & another vs Mohamed Yusuf Osman & 2 Others* [2022] eKLR and *Bank of Africa Kenya Limited vs Put Sarajevo*



General Engineering Co. Ltd & 2 Others [2018] eKLR the Appellant argues that mistakes of Counsel should not be visited upon their clients.

12. Finally in regard to the third issue, it was submitted that the only test to be met to obtain leave to file additional documents after close of pleadings is the question of prejudice. The Appellant in this regard argues that the Respondents did not demonstrate any prejudice they would suffer since the guarantee documents sought to be put in had already been lodged in Court, and further the company resolution does not have substantive bearing on the facts of the case and there was, therefore, no need for a witness to be examined on the documents.

Respondents' submissions

13. The Respondent submitted on one issue to wit; whether the Appellant is deserving of the orders sought in the appeal. It was submitted that prior to hearing of the main suit before the trial court the Appellant withdrew the case against the intended defendants and is therefore attempting to prosecute its case piecemeal and /or patch up evidence which it believed was rendered insufficient during the cross-examination of its first witness.
14. It is contended that the manner in which the Appellant has been prosecuting its lawsuit is against the Overriding Objectives enshrined under the *Civil Procedure Act*. According to the Respondents, the enjoinder of the intended parties is only a ruse designed to sneak in additional evidence.
15. Reliance was placed in Samuel Kiti Lewa vs Housing Finance Co. of Kenya Ltd & Another [2015] eKLR, from which the trial court also drew guidance, wherein it was stated :-

“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.”

16. The Respondents also submit that the Appellant failed to give any reason for the failure to put in all its documents before the trial Court at the pre-trial stage. It is contended that the trial Court's discretion was not used arbitrarily but rather legally and sensibly. It is a party asking the court to exercise its discretion in its favour that must establish a foundation for doing so, argue the Respondents. In the view of the Respondents, the trial Court was to determine whether the Appellant offered justification or the necessary basis for the court to permit reopening of the defense case and calling of additional evidence.

Analysis and determination

17. It is trite that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial court's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle vs Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd vs. Oakdale Commodities Ltd* (1997) eKLR. The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:

“i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;



- ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
- iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”

18. Having carefully considered the Appeal, the Grounds of Appeal against part of the impugned Ruling and the arguments for and against it, this Court identifies the following sole issue for determination in this appeal:-

Whether the Respondents would suffer prejudice by introduction of the Appellant’s supplementary list of documents in issue after close of pleadings.

- 19. The Appellant had sought leave to file additional documents to wit; the stamped guarantees and the Company Resolution which it contended were necessary for proof of its case and that the further documents would in no way prejudice the Respondents.
- 20. The court is told that unstamped Guarantees had been initially lodged and annexed to the Appellant’s initial bundle of documents. It is desired to lodge the stamped Guarantees in compliance with the provisions of the Stamp Duty Act which requires stamping of such instruments for them to have evidentiary value. As regards the company resolution, the Appellant contends that the same does not even have a bearing on the case other than authorizing institution of the suit.
- 21. The Guarantees are dated 12th February, 2022 and 24th of February, 2022. The Appellant company’s resolution to pursue the recovery of the debt subject of the suit in the lower court as well as authority to plead was addressed in Agenda No. 6 (c) of the Appellant’s meeting purportedly held on 15th August 2022. The Guarantees were lodged for stamping on the 26th May, 2023. PW1 had testified on 4th of May, 2023. The stamping of the Guarantees took place after the first witness had testified.
- 22. The Appellant’s witness admitted to having no Company Board resolution authorizing institution of the suit but nonetheless testified to having been given the Guarantees regarding the amount owed. The hearing was to continue on a different date and so the Appellant had not yet closed its case.
- 23. Order 11 of the Civil Procedure Rules 2010 requires that before a suit is set down for hearing parties ought to file their respective documents within certain stipulated timelines. Leave of the Court must be sought and obtained before filing of additional documents outside the set timelines.
- 24. In the case of Mbogo & Another vs Shah, [1968] EA, these principles were enunciated regarding exercise of the court’s discretionary power: -

“An appellate court will not interfere with the exercise of the trial court’s discretion unless it is satisfied that the court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous, or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of judicial discretion and that as a result there has been miscarriage of justice.

The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought whether by evasion or otherwise, to obstruct or delay the course of justice.”



25. I further draw guidance from the case of *Mudwasi (Suing as Chairman of Wankanyakla Self Help Group) & 3 others vs Tsusho Capital Kenya Ltd & another* [2022] KEHC 15989 (KLR) where it was stated that:-
- “Further, there is no provision in the rules that permits the court to accept a list of witnesses or documents filed outside the time lines provided in Order 3 Rule 7 and Order 7 Rule 5. The provisions of Order 3 and Order 7 are meant to curb trials by ambush. The objective is to make clear to the other party, the nature of evidence that he will face at the trial.”
26. Before this Court interferes with the discretion of a trial court, the Appellant has to satisfactorily convince the court that irrelevant factors were taken into account or relevant ones were not considered. It should also be shown that the additional documents are necessary (see the case of *Associated Motor Boat Co. Ltd supra*).
27. In my view, allowing the Appellant to put in the stamped Guarantees would not be prejudicial to the Respondents. Hearing of the Appellant’s case is ongoing and the Respondents would have an opportunity to peruse the documents and put in any further documents or witness statements. Further, they would have a chance to cross examine witnesses on the additional documents, if necessary.
28. Regarding the Company Resolution, the same had been left out completely from the Appellant’s initial bundle of documents before it was realized that there was no company authorization to institute suit. As noted by the learned Trial Magistrate, there appears to be no explanation given for the failure to file the crucial document earlier. The Appellant, however, pleads that mistakes of Counsel should not be visited on the litigant and that the Respondents have not demonstrated any prejudice likely to be occasioned to them were the belated Appellant Company’s authorization to bring this suit was allowed into the record.
29. In *Pinnacle Projects Limited vs Africa & Another* [2019] eKLR it was 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, material 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 the law.”
30. The Court has a duty to ensure timely disposal of suits by ensuring procedures are followed effectively. Article 159 (2) (b) of *the Constitution* demands that justice shall not be delayed and underscores the need to respect procedure and adhere to timelines. What is prohibited, however, is undue regard to procedural technicalities. The Court is expected to weigh the circumstances obtaining in every particular case.
31. The nature of the documents sought to be added is such that in the absence thereof the suit would be incompetent thereby militating against substantive justice. It may be noted that under Section 78 (1) (e) of the *Civil Procedure Act* provides that additional evidence may even be allowed on appeal in appropriate circumstances.
32. Further Order 18 Rule 10 of the Civil Procedure Rules 2010 provides that the court may allow a party to recall any witness at any stage of the proceedings. Again, the Respondents will have an opportunity to interrogate any additional document (s) and cross examine the opposite party’s witnesses thereon.



This court therefore sees no prejudice that would be occasioned to the Respondents if the additional documents are filed as sought .

33. For the foregoing reasons, I find that the appeal is merited and is allowed as follows;
- a. Leave is granted to the Appellant to file the supplementary bundle of documents in the nature of the Stamped Guarantees and the relevant Company Resolution as desired
 - b. The documents shall be filed and served within 7 days from the date hereof, failure to which the appeal will automatically stand dismissed.
 - c. The Respondents be, and are hereby granted corresponding leave to file and serve any additional bundle of documents and witness statements, if need be.
 - d. The parties shall bear their own costs of this Appeal.

Judgement accordingly.

**JUDGEMENT DELIVERED VIRTUALLY THIS 19TH DAY OF MAY 2025 IN THE PRESENCE OF;
J. M. NANG'EA, JUDGE.**

The Appellant's Advocate, Ms Wanjiku

The Respondents' Advocate, Mr. Omuyoma for Mr. Wachira

The Court Assistant (Ms Jeniffer)

J. M. NANG'EA, JUDGE.

