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Okemwa v Ogowo (Environment and Land Appeal E001 of 2025) [2025] KEELC 6218 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6218 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY

ENVIRONMENT AND LAND APPEAL E001 OF 2025

FO NYAGAKA, J

SEPTEMBER 23, 2025

BETWEEN

ALICE NYABOKE OKEMWA .... APPELLANT

AND

NICHOLAS OCHIENG OGOWO .... RESPONDENT

RULING

(On whether to leave should issue for a party to adduce additional evidence on appeal)

The Application

1. Nicholas Ochieng Ogowo, the applicant herein, filed a Notice of Motion dated 12th February 2025. He sought the leave of this Court to file (sic) additional evidence at the appeal stage. The application is premised on Section 78 of the *Civil Procedure Act* as well as Order 42 Rule 27 of the Civil Procedure Rules. Specifically, the Respondent/ Applicant sought the following Orders that:

    1. This Honourable Court be pleased to grant the Respondent/Cross appellant leave to file additional evidence at appeal.

    2. The costs of this application be provided for.

2. The documents which the applicant seeks to introduce are contained in his List of Additional Documents, also dated 12th February 2025. The specific documents include a copy of a set of bank statements from Equity Bank for the account H. Obach & Partners Advocates; a copy of printed screenshot messages between the applicant and the respondent regarding the sale agreement; and a copy of the land transfer documents relating to the suit property.

3. The grounds for the application are that the documents sought to be produced at this stage were not produced at the lower court despite being of great importance to the determination of the suit. The appellant had constantly raised the issue of fraud and lack of payments in the suit yet the additional

documents show evidence to the contrary. The appellant would have a chance to cross examine on the evidence sought to be introduced. There would be no prejudice occasioned to the appellants and therefore the interest of justice demands the grant of the application.

4. The justification for the introduction of the new evidence is found in the Supporting Affidavit sworn by the appellant on 12th February 2025, specifically at paragraphs 4 and 5 of his affidavit. He depones in paragraph 4 that the Appellant/ Respondent in the application raised issues of fraud and lack of payment in his suit at the trial as well as at the appeal, which issues were never pleased in her plaint and supporting affidavit. This additional evidence, the applicant argues, is necessary to demonstrate the contrary.

5. At paragraph 5 of the applicant's supporting affidavit he states that the reason for non-production of the additional evidence was on account of client confidentially as the firm that represented him in the sale transaction, that is H. Obach & Partners Advocates had restricted his former advocates on record – Odindo & Co Advocates from filing their bank statements.

6. The applicant annexed to supporting affidavit, as "NO 1", copies of the additional documents/ evidence he wished to introduce.

The response

7. The application was opposed by the Respondent, Alice Nyaboke Okemwa, who filed Grounds of Opposition dated 4th April 2015 as well as a Replying Affidavit dated 17th April 2025. She maintained that the application lacked merit and is abuse of the court process as the same is mischievous and meant to defeat and/ or delay the course of justice.

8. The respondent also deponed that the application does not meet the established threshold for grant of orders of admission of additional evidence at the appeal level. She also deponed that the evidence the applicant intends to introduce is not new as the same was within his disposal during the trial but opted to keep it to himself.

9. Concerning the bank statements, the respondent depones that such issue of the bank statements arose during the trial but the applicant's witness deliberately declined their production, citing advocate client confidentiality.

10. The respondent also deponed that admission of the phone screenshots of the communication alleged to be between herself and the applicant would invite interrogation and/or retrial of the case since she maintains that such communication never emanated from her phone. As such, she maintained that this evidence does not qualify to be introduced at the appellate stage.

11. Lastly, the respondent maintained that the application is a mere afterthought and that the same ought to be dismissed.

Submissions

12. The application was canvassed by way of written submissions, both dated the 17th April, 2025.

13. The applicant's submissions reiterate the contents of the application and the supporting affidavit. The applicant relied on Section 78 (1) (d) of the *Civil Procedure Act* to invoke this court's power to take additional evidence, either by itself or by directing the trial court to do so. Further, the applicate cited Order 42 Rule 27 of the Civil Procedure Rules on the conditions to be met before additional evidence is taken by an appellate court, that is, where the evidence is unjustly excluded or where the evidence could not be reasonably procured due diligence before the trial.

14. The applicant cited several precedents, including Mohamud Abdi Mohamad v Ahmed Abdullahi Mohamad & 3 others (petition 7& 9 of 2018) Consolidated)) [2018] KESC 62 EKLR where the Supreme Court set out the test that should guide superior courts when determining whether or not to take additional evidence at the appeal stage.

15. The applicant further submitted that he had availed the evidence in question to his advocate who failed to introduce it. He submitted that failure to produce the same was not deliberate and argued that he should be allowed to submit this evidence at the appellate stage in the interest of justice. The applicant relied on several decisions, including Railway Corporation v Nyahururu Town Council [2015] eKLR to argue that adherence to procedure should not be to the detriment of substantive justice.

16. The Respondent, on her part, cited the Court of Appeal decision in Owner of Motor Vessel "Dolphin Star" v E.T. Timbers PTE Limited, Civil Appeal no. E078 of 2021 which set out the test for admitting additional evidence on appeal. Firstly, she submitted that the applicant should demonstrate that he was not capable of obtaining the evidence with reasonable diligence for use at the trial court; that the evidence was not within his knowledge or could not be produced by the applicant at the trial court. Secondly, the evidence sought to be introduced must not be utilized for removing a lacunae or filling gaps in evidence. Lastly, she submitted that a consideration of whether an applicant would be reasonably aware of the evidence in the course of trial is essential for purposes of ensuring equity and fairness in trial.

17. Concerning the first limb of the test established in Owner of Motor Vessel 'Dolphin Star'(supra), the respondent submitted that the applicant sought to introduce evidence that was already in his possession during the trial. On the second limb of the test, the respondent submitted that the issue of proof of payment arose during the trial at the lower court. However, when the applicant's witness was interrogated concerning the production of the bank statements that he now seeks to introduce as additional evidence, the witness cited advocate-client privilege as an excuse of not producing this evidence. He concluded that seeking to produce the same statements as additional evidence at the appeal stage is an exercise aimed at filling gaps in the applicant's evidence. Lastly, the respondent submitted that the applicant failed to establish that he had no knowledge or could not be reasonably aware of the evidence he now seeks to adduce as the same was in his possession during the trial.

Issues for determination

18. The issues for determination in this application are:

    a. Whether this court should exercise its discretion and grant the applicant leave to admit additional evidence as prayed in his application, and

    b. Who should bear the costs of the application.

Analysis, and Determination

Whether this court should exercise its discretion and grant the applicant leave to admit additional evidence as prayed in his application

19. First, it is important to restate the importance of proper drafting of pleadings. This court has times without number stated that pleadings form the single most importance component or process of any case. As such with poor drafting a client is likely to lose a good case or defence yet the opposite could have been when good pleadings are supported by properly adduced evidence.

20. The scenario restated above is not the one demonstrated herein. In the prayers the Cross appellant prays that leave be granted for him to “file additional evidence at appeal”. This prayer is, to say the least, still born. If it is granted as it is, it means that the appellant will be automatically closed out of testing the said evidence because the request of the appellant is only that the he files the documents which further means that once filed, the documents will form part of the record for this Court to use to determine the appeal and cross appeal without testing their veracity and proving the evidence in them. That would be against the rules of natural justice. Again, since parties are bound by their pleadings the court cannot and will not re draft the party’s pleadings so as to ‘improve’, make good or clarify the mind of the party. That would mean that the court ceases to be a neutral arbiter and takes sides with the party for whom it makes the documents better than when they were filed. It would be against the principles of equality of arms and the proper functioning of the adversarial system.

21. That said, the applicant seeks to be granted leave by this court to admit additional evidence, which he claims is necessary in resolving the matter at hand, but was never produced before the trial court. Section 78 (1) (d) of the *Civil Procedure Act* grants powers to this court while exercising its appellate jurisdiction to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be imposed by law.

22. Order 42 Rule 27 of the Civil Procedure Rules provides as follows concerning the production of additional evidence:

> (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the court to which the appeal is preferred; but if—
>
> (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or
>
> (b) the court to which the appeal is preferred requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the court to which the appeal is preferred may allow such evidence or document to be produced, or witness to be examined.
>
> (2) Wherever additional evidence is allowed to be produced by the court to which the appeal is preferred the court shall record the reason for its admission.

23. In ordinary parlance, it is anticipated that a party adduces all the evidence relating to his case before the trial court so as to fully prosecute his case. As such, admission of evidence is not ordinarily the preserve of courts sitting in their appellate capacity. In Gachuki & another v Njenga & 2 others (Civil Appeal (Application) 413 of 2019 [2025] KECA 451 (KLR), the Court of Appeal noted that admission of new evidence at the appeal level is not automatic but a matter of the court’s discretion. The Supreme Court in Mohamed Abdi Mohamud v Ahmed Abdullahi Mohamad (supra) cautioned that additional evidence should be admitted sparingly, on a case by case basis, and with abundance of caution. In Patrick Thoithi Kanyuira v Kenya Airports Authority, Petition (Application) no. 7 of 2017 the Supreme Court noted that:

> Typically, after analyzing all the evidence, the trial court will determine the controversy based on the evidence before it. In an appeal, the appellate court is concerned with the question whether the lower court has appreciated the evidence properly or not and whether the law has been interpreted correctly. But if, subsequent to the judgment, and before the decision of

the appellate court, the appellant wishes to present evidence that he ought to have tendered at the trial but did not, certain prescribed conditions must be satisfied

24. The discretionary power of courts to admit additional evidence on appeal is never applied blindly. The Supreme Court in Mohamed Abdi Mohamud v Ahmed Abdullai Mohamed (supra) set out the conditions that must be met before a court admits additional evidence at the appeal level in the following terms:

> 79. ...We therefore lay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows:
>
> a. the additional evidence must be directly relevant to the matter before the court and be in the interest of justice;
>
> b. it must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;
>
> c. it is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;
>
> d. Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;
>
> e. the evidence must be credible in the sense that it is capable of belief;
>
> f. the additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;
>
> g. whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;
>
> h. where the additional evidence discloses a strong prima facie case of willful deception of the Court;
>
> i. The Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful.
>
> j. A party who has been unsuccessful at the trial must not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case.
>
> k. The court will consider the proportionality and prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.

25. I would hasten to add that since parties are given chance to present their cases at the trial stage and they do, it would defeat the purpose of such an important stage if adduction of additional evidence on appeal was a matter of course. It cannot be. A party should strive in all ways to ensure that they present fully their evidence at the trial stage. They can only be granted chance at the appellate stage to adduce evidence if, first and foremost, such evidence was not available to them or accessibility by the exercise of due diligence, or the party was prevented beyond ability to succeed in getting the same evidence in order to avail it at the trial, or the factors that prevented the party from producing the evidence were so strong that no ordinary person could have succeeded to overcome them. It means that the threshold for convincing the court to agree to the additional evidence being given on that appellate stage is much higher than the proof on a balance of probabilities. If percentages could suffice to express the level it should be 90% to 95% of impossibility of obtaining the evidence to 10% to 5% chance of success in doing so: it almost rivals the beyond reasonable doubt standard of proof.

26. Having stated as above, the applicant's prayer herein is that this court grants him leave to adduce evidence in the nature of bank statements, phone screenshots and transfer documents relating to the suit property. The critical question that this court should answer is whether the application meets the test established in Mohamed Abdi Mohamud v Ahmed Abdullahi Mohamed (supra).

27. I have carefully analyzed the application, supporting affidavit and submissions filed by the applicant as well as the replying affidavit and submissions filed by the respondent. My conclusion is that the all the evidence the applicant now wants to introduce on appeal was available to him and at his disposal during the trial. He had the power over their production but chose not to. I say so because, the suit appealed from was filed in the year 2024 yet the bank statements span the period between December 2021 to March 2022. That was before the suit was brought. I also note that the phone screenshots were taken in the year 2022. Equally, the transfer was recorded on the Presentation Book on 6th June, 2022 and the Land Control Board consent was granted on 5th April, 2022. A casual perusal of the proceedings shows further that the trial took place in 2024.

28. Other than the documents which the applicant alleges that they were a subject of client confidentiality he has advanced no reason whatsoever as to why the screenshots and transfer documents that were already in his possession at the time of the trial could not be produced then. Even when the Respondent's witness, the then Advocate who had done the transaction testified and was cross examined over the documents he did not pray for leave to avail them His advocate too did not. It is therefore my humble conclusion that attempting to admit the same at this state is an afterthought and an exercise aimed at filling gaps in his evidence.

29. Concerning the bank statements, the applicant maintained that his former advocates cited client confidentiality hence the reason the bank statements could not be admitted during the trial. My understanding of the justification advanced by the applicant is that the advocate maintained one account for several clients, and admitting a statement of such an account would be in breach of his duty to keep the information relating to his other clients privileged. I say so because I have examined the statements that the applicant now seeks to introduce to this court as additional evidence and the same contains particulars of other parties' transactions alleged to have been made to the respondent. The mandate to keep client's information privileged by advocates is provided in Section 134 of the *Evidence Act* which provides that:

> (1) No advocate shall at any time be permitted unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become

acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(a) any communication made in furtherance of any illegal purpose;

(b) any fact observed by any advocate in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether the attention of such advocate was or was not directed to the fact by or on behalf of his client.

(2) The protection given by subsection (1) of this section shall continue after the employment of the advocate has ceased.

30. Granted the foregoing, would the duty of the applicant's former counsel on record to keep his clients' information confidential bar the applicant from adducing evidence relating to his transaction? I do not think so. If indeed the information contained in the bank statement was privileged, how, when and why did this privilege cease now on the appellate stage? There is no information provided to give these answers. My conclusion is that, if the information was privileged during the trial, it remains even so even on appeals unless the privilege is expressly waived and shown to be so. Section 134 (2) of the *Evidence Act* provides that protection given to client's information continues even after the employment of an advocate by the client ceases. Of importance to note is that opening the privilege or confidentiality lid of an advocate/client relationship is a formal and elaborate or express procedure. This has not been demonstrated, including letters requesting for such information from M/S H. Obach and Partners Advocates and disclosing the reason for the request for such documents, and the letter acceding to it. Moreover, the purported statements are not certified by the bank as authentic. If advocate/client confidentiality is anything to go by then the evidence by way of bank statements sought to be adduced was not legally obtained and cannot be relied on. I repeat that there was no written information at all that H. Obach and Partners had instructed M/S Odindo & Company Advocates not to file their bank statements and that indeed the present advocates were now instructed or permitted to file the said documents.

31. Furthermore, it was not enough to state that that the applicant's counsel invoked client confidentiality without a factual basis to support this allegation. It is also my finding that the applicant did not take steps to have the information relating to his transactions redacted for purposes of producing evidence that was already available to him at the trial court.

32. The upshot of the foregoing is that the applicant's application fails the test established by the Supreme Court in Mohamed Abdi Mohamud v Ahmed Abdullai Mohamed (supra) since the evidence he seeks to introduce at the appeal stage was already in his possession during the trial. In Cyrus Khalaga Khwa Jirongo v Soy Developers Limited & 9 others, Petition (Application) No. 38 of 2019 the Supreme Court as held as hereunder:

> 40. In stating as above, we are innately aware that the interest of justice dictates that this Court must ensure that all parties to a dispute are accorded a fair hearing in order to resolve issues not only amicably, but also judiciously. However, we are unconvinced that the Petitioner was not accorded a fair trial at the Superior Courts below. We are perturbed, as we are curious at this strange turn of events where the Petitioner now wants to engage this Court in gerrymandering and

cat games in the name of adducing additional evidence in an otherwise straight forward appeal. [41] By seeking leave to admit new evidence, which had all along been in his possession going by the facts of the case, the Petitioner would be abusing, not only the discretion of this Court in exercise of its jurisdiction, but also its processes, and seeking, rather dubiously and ingeniously, to reconstitute his case which had been conclusively determined by the Superior Courts below. This Court is convinced that the Petitioner, being unsuccessful at the Court of Appeal, is now trying to amend and make corrections to his case by seeking to introduce supposed new and fresh evidence.

(42) Having shown that the Petitioner did not exercise any diligence in obtaining the evidence that he now seeks to adduce before this Court, and that he had prior knowledge to or actual possession of such evidence, this Court would be restrained to continue in examining the other grounds of the application, to wit, whether the evidence would have any relevance to the matter, or indeed of probative value, and that such an exercise would indeed be a frittering of this Court's judicial time. Once it has been established that the Petitioner failed in demonstrating that he was unable, with due diligence to obtain the evidence, or that it was in his possession, as pronounced in the principles in Wajir, then the Court would be left with no other option but to dismiss his application. In stating so as above, our findings are limited to the application before us and not the pending appeal which would ultimately be determined on its merits (emphasis added).

33. It also is my finding that the application fails to meet the threshold required of him under Order 42 rule 27 of the Civil Procedure Rules. The trial court did not decline to adduce the evidence in question. instead, when the question of the bank statements came the applicant sought to rely on the client confidentiality, hence he deliberately avoided the production of these bank statements.

34. The applicant submitted that this Court should overlook procedural technicalities and instead, favor substantive justice as envisaged under Article 159 of *the Constitution* of Kenya 2010. Whereas this court is alive to the centrality of substantive justice in the resolution of disputes as against technicalities, it also is alive the to the fact that rules of procedure aid in the attainment of justice and balancing the equality of arms or the legal field for all parties, and they cannot just be wished away. Therefore, where all the parties are given opportunity to apply and use the rules for purposes of furthering their case, evidence or argument and one does not willingly use the rules thereby disadvantaging his case he cannot be given a second bite at the cherry. By giving him the second chance, it would be giving him an unfair advantage over his adverse party who shall have acted bona fide in the matter. A court of justice should not bend rules to favour one party in such circumstances.

35. Concerning adherence to rules of procedure the Court of Appeal, in Telkom Kenya Limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited [2014] KECA 600 (KLR), stated as follows:

> The respondents are seeking umbrage under Article 159 (2) (d) of *the Constitution* which provides that justice shall be administered without undue regard to procedural technicalities. It does not avail them. We are content to state that the constitutional provision is not meant to whitewash every procedural failing and it is not meant to place procedural rules at naught. In fact, what has befallen the respondents is proof, if any were needed, that

there is great utility in complying with the rules of procedure. Such compliance is neither anathema nor antithetical to the attainment of substantive justice… (emphasis added).

36. Additionally, in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 other [2013] KECA 113 (KLR) the Court of Appeal (Ouko, JA as he then wa) observed as hereunder concerning the role of rules of procedure in litigation:

> It ought to be clearly understood that the courts have not belittled the role of procedural rules. It is emphasized that procedural rules are tools designed to facilitate adjudication of disputes; they ensure orderly management of cases. Courts and litigants (and their lawyers) alike are, thus, enjoined to abide strictly by the rules. Parties and lawyers ought to be reminded that the bare invocation of the oxygen principle is not a magic wand that will automatically compel the court to suspend procedural rules. And while the court, in some instances, may allow the liberal application or interpretation of the rules that can only be done in proper cases and under justifiable causes and circumstances. That is why *the Constitution* and other statutes that promote substantive justice deliberately use the phrase that justice be done without "undue regard" to procedural technicalities.

37. In the same decision, (Nicholas Kiptoo Arap Korir Salat (supra), Kiage JA stated as follows concerning the same issue,

> I am not in the least persuaded that Article 159 of *the Constitution* and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succour and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.

38. Further, the court proceeded to state that:

> While not espousing a dry, lifeless and uncritical obeisance to rules at the expense of substantive justice, I am not prepared to hold that parties can simply wave *the Constitution* and the oxygen principles in the Act hoping thereby to obliterate their defaults and cure the in competencies and defaults of their appeals….

39. Order 42 rule 27 of the Civil Procedure Rules is couched in mandatory terms. Adherence thereof is beneficial not only for the applicant but also for the respondent, as justice to one party is justice to the other. Accordingly, the appellant cannot now be heard to argue that failure to adduce evidence that was squarely in his possession and which could be produced is an issue requiring the invocation of Article 159 (2) (d) of *the Constitution*. For this reason, the applicant's application for leave to adduce additional evidence at the appeal fails. As was noted by the Supreme Court in Cyrus Khalaga Khwa Jirongo v Soy Developers Limited & 9 others (supra), this finding is only limited to the application dated 12th February 2025 and not the appeal as the latter should be heard on its merit.

Who to bear the costs of the application

40. Concerning the costs of this application, section 27 of the *civil procedure act* is instructive:

> Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

41. In Rai & 3 others v Rai & 4 others (petition 4 of 2012) [2014] KESC 31 (KLR), the Supreme Court outlined the principles governing the award of costs in the following terms:

> 18. It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.

42. This Court shall not depart from the same. An award of costs is the discretion of the Judge. However, the law provides that the starting point is that the costs will follow the event. In case the Judge is of a different view: that costs do not follow the event, then he will award them to the party he decides but he has to give reasons for them.

Final Disposition

43. The upshot of the foregoing is that:

    a. The application dated 12th February 2025 is hereby dismissed.

    b. The applicant shall bear the costs of the application.

    c. The Appellant is directed to file written submissions within the next 15 days and serve on the Respondent. The Respondent too shall, upon service, file theirs within the next 15 days. The submissions the Cross Appellant to be together.

    d. The Appellant to submit only on the cross appeal within the next 15 days of service of the Cross Appellant's.

    e. Submissions not to exceed four pages of New Times Roman, Font 12 of 1.5 Spacing.

    f. Hearing of the appeal on 25th of November 2025.

44. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM THIS 23RD DAY OF SEPTEMBER, 2025.

HON. DR. IUR NYAGAKA

JUDGE

From 2:12 PM in the presence of,

Fiona Court Assistant

Ms. Ochieng Advocate holding brief for Ms. Owuor Advocate for the Applicant

Mr. Shikuku Advocate for the Respondent