



REPUBLIC OF KENYA



**Wafula v Wangundu (Civil Appeal E0123 of 2022)
[2025] KEHC 13884 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13884 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E0123 OF 2022
REA OUGO, J
SEPTEMBER 30, 2025**

BETWEEN

CENTRINE WEKESA WAFULA APPELLANT

AND

GRACE WAIRIMU WANGUNDU RESPONDENT

*(Being dissatisfied with the ruling delivered by Hon. C.S Mutai
SPM on the 25/11/2022 in Bungoma CMCC No 486 of 2015)*

JUDGMENT

1. At the lower court, the appellant filed an application seeking leave to file a list of documents out of time. She claimed that at the time of filing the statement of defence and counterclaim dated 5/5/2017, the M-Pesa statement and chargesheet, plus the file in Criminal Case No 3058/14, had not been obtained. That obtaining the documents from the court took time is, hence, the delay.
2. The application was opposed by the respondent, who averred that the suit had been filed on 9/9/2015 and that 7 years had lapsed. He had testified over seven months ago that if the orders sought by the appellant were to be granted, it would be prejudicial. It was averred that the appellant had not shown that the alleged documents had been sought at the time of filing the statement of defence.
3. The trial magistrate, in dismissing the application, observed as follows:

“In this matter, I will agree with the advocate for the plaintiff that this suit was instituted on 9th September 2015 through the filing of plaint which was a period of 7 years. The plaintiff testified on the 12th August 2021 which was a period of 11 months at time of seeking orders. Introducing new documents at this stage will prejudice the plaintiff who has already testified. Litigation must come to an end. The defendant is certainly guilty if laches.”



4. Aggrieved by the trial magistrate's decision, the appellant has filed this appeal citing the following grounds:
 1. That the honourable magistrate erred in law and fact when he dismissed the application dated 1/03/2022 with costs in toto disregard of the explanation by the appellant on record.
 2. That the honourable magistrate erred in law and fact when he dismissed the application dated 1/03/2022 in toto disregard of the applicant's submission.
 3. That the honourable magistrate erred in law and fact when he dismissed the application dated 1/03/2022 in toto contravention of the principles of natural justice.
5. The appellant, in support of the appeal, argues that a party who desires any court to give judgment as to any legal rights or liability has the duty to prove the existence of facts which he asserts give rise to that liability or judgment (section 107 of the *Evidence Act*). Pleading of the parties was hinting at M-Pesa transactions. Therefore, the M-Pesa statements sought to be introduced are not strange to the respondent. Article 159 of *the Constitution* is to inter alia that substantive justice shall be adhered to without regard to technicalities. Section 1A of the *Civil Procedure Act* gives the objectives of the Act, while Section 1B gives the duty of the court in furthering the objectives. The appellant, notwithstanding the production of the documents at this time, the respondent shall have the time to cross-examine the witnesses who shall produce the documents. It was submitted that the production of the documents will assist the court in ascertaining the allegations as pleaded.
6. The respondent, in opposing the appeal, argues that the appellant failed to offer any explanation why she was seeking to introduce fresh documents 7 years after the suit was filed and the respondent closed her case. She supported the trial court's finding that introducing new documents after the respondent had closed her case would be prejudicial and that the appellant was guilty of laches.

Determination

7. It is common ground that the list of documents and documents sought to be filed by the appellant was being done outside the stipulated timeframe. In *Nyambura v Mwangi & 3 others* [2025] KEELC 4882 (KLR), the court opined as follows:

“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.”
8. The trial magistrate applied his discretion in dismissing the application before him, and this called for an examination of whether he abused that discretion. The main issue raised in the application before the lower court was whether the appellant should be granted leave to file a list of documents out of time, as well as an M-Pesa statement and chargesheet.
9. 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.”

10. The circumstances of this case were that the respondent, who was the plaintiff, had already testified without anticipation of the additional evidence. The appellant, in her affidavit in support, averred that the documents were unavailable at the time of filing suit. However, the statement annexed to her affidavit relates to 2015 transactions, which the appellant would have easily obtained in 2015 or earlier. There is prejudice to be suffered by the respondent if the application is allowed.
11. Considering that the plaintiff had already given her testimony and the appellant had 7 years to file the additional evidence, I see no error in the finding of the trial magistrate.
12. Consequently, I find no merit in the appeal and the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER 2025

R.E. OUGO

JUDGE

In the presence of:

Appellant - Absent

Miss Wanyama -For the Respondent

Wilkister -C/A

