



**Njambi v Waweru (Environment and Land Case 719 of 2016)
[2025] KEELC 6634 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6634 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 719 OF 2016
OA ANGOTE, J
OCTOBER 2, 2025**

BETWEEN

PAUL THUO NJAMBI PLAINTIFF

AND

JAMES MUTURI WAWERU DEFENDANT

RULING

Background

1. Before this court for determination is the Defendant's Notice of Motion application dated 26th May 2025 brought under Sections 1A, B & 3A and 63(e) of the *Civil Procedure Act*, Order 7 Rule 5(d), Order 51 Rule 1 of the Civil Procedure Rules 2010 and Articles 50 and 159(2)(d) of *the Constitution*, in which the Defendant seeks the following orders:
 - a. The defendant be granted leave to file additional evidence that was not in his possession during the time of hearing of this matter in support of its defence and counterclaim.
 - b. That the defendant be granted leave to file a certified copy of the map for Nairobi Block 190.
 - c. That the defendant be granted leave to file a copy of the map from Kayole Spring Valley Resettlement Scheme.
 - d. That the defendant be granted leave to file a map from the Nairobi City Council showing the official demarcations and black numbers of the Kayole Spring Valley parcels.
 - e. That the said Bundle of Documents be deemed as properly on record after filing.
 - f. The costs of this application be in the cause.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of James Muturi Waweru, the Defendant, who deponed that when the matter came up for hearing on 9th



July 2024 and 21st January 2025, certain documentary evidence listed in his bundle had not been filed, including a map of the suit property known as Nairobi Block 190.

3. He averred that the map he annexed to his earlier documents was uncertified, as he had not succeeded in obtaining certification prior to the hearing, and that the Court accordingly directed him to produce a certified copy of the map for Nairobi Block 190.
4. Mr. Waweru stated that on 16th January 2025, he wrote to the Survey of Kenya requesting the certified copy, and the letter was received on 17th January 2025; that the Survey of Kenya delayed in issuing him the said map, and by the time of the defence hearing on 21st January 2025, he had not received it and that he only obtained the certified map on 13th May 2025, after the hearing had been conducted.
5. He further averred that he discovered a discrepancy between the official government map and the map relied upon by officials of the Kayole Resettlement Scheme, the latter having been used to defraud members of the public, and that according to the scheme map, the suit property was described as Plot 673B rather than 675, and additional parcels not appearing on the government map had been created.
6. The Defendant stated that the Nairobi City Council delayed in furnishing him with information on the block numbering of the parcels of land as per their records and that it was only after he received the Nairobi Block 190 map that the City Council supplied its own records, which he contends are crucial in demonstrating that Plot 675, alleged to be the suit property, does not exist as it falls on riparian land designated as open space.
7. Mr. Waweru deponed that the additional documents are material to the just determination of the dispute and urged the court to admit them into the record, contending that their admission will not occasion any prejudice to the Plaintiff.
8. In a Replying Affidavit dated 10th June 2025, the Plaintiff, Paul Thuo Njambi, deponed that he filed this suit on 29th June 2006 and that close to ten years later, he is still pursuing justice. He averred that the record would show that the matter has delayed largely on account of the Defendant's delaying tactics.
9. He stated that pretrial directions were taken on 14th February 2018, 14th May 2018 and 6th November 2018, during which the Defendant sought and was granted additional time to file documents, and that the Defendant thereafter confirmed that he had filed all the documents necessary for his case.
10. The Plaintiff contended that during his testimony on 21st January 2025, the Defendant admitted that it was around 2017-2018 when he allegedly discovered that the suit property did not exist. He argued that the Defendant should therefore have gathered and filed all supporting documents at that time, and that, in an adversarial system, the Defendant cannot be heard to say that he was waiting for the court to direct him to produce a certified map in proof of his case.
11. The Plaintiff averred that the Defendant has consistently stalled the proceedings. He cited, as an example, that when the matter was scheduled for full hearing on 25th September 2023, the Defendant filed an application dated 15th September 2023 seeking to amend his Defence and file further documents, thereby derailing the scheduled hearing.
12. He contended that a similar scenario has recurred in that having failed to file submissions within the timelines set by the Court, the Defendant filed the present application on the eve of a mention date for purposes of fixing a judgment date.
13. The Plaintiff further deponed that his case was heard and closed on 9th July 2024, and that the Defence case was heard and closed on 21st January 2025.



14. He asserted that the Defendant was aware of the existence of the purported map as early as 2017-2018 and with due diligence could have obtained a certified copy. He argued that the Defendant's letter of 16th January 2025 and the accompanying stamp were concocted to cure evidentiary gaps after the hearing had already been concluded.
15. The Plaintiff further deponed that contrary to the Defendant's position, the map produced at the hearing was marked "Nairobi Block 190 (Kayole Matopeni)". He contended that the Defendant now seeks to introduce three different maps, although only two were served on him and that upon scrutiny, none of the said maps is an exact copy of the uncertified map produced at the hearing.
16. He maintained that the authenticity of the maps cannot therefore be verified without reopening the case, recalling witnesses and undertaking cross-examination, which, he believes is the Defendant's intention.
17. The Plaintiff deponed that the new information purportedly obtained from Nairobi City County is unverifiable and without basis. He contended that the application is an afterthought, devoid of merit and an abuse of the court process and urged that it be dismissed with costs.

Submissions

18. Counsel for the Defendant/ Applicant submitted that Section 107(1) of the *Evidence Act* requires an applicant seeking to adduce additional evidence to demonstrate that such evidence could not, with reasonable diligence, have been obtained earlier.
19. It was urged that map number 190 had previously been adduced as per the Defendant's list of documents, but that the Defendant was unable to obtain a certified copy owing to delays at the Survey of Kenya.
20. The Court, it was submitted, subsequently directed that the map be certified; that a formal request was made to the Survey Department on 16th January 2025, and that the certified copy was only issued on 13th May 2025, well after the hearing had closed.
21. Counsel further submitted that the officials of the Kayole Resettlement Scheme relied on a different map to defraud members of the public, which the Defendant only came across after the hearing, and that the Nairobi City Council information on block numbering was done only after the certified Nairobi Block 190 map was released. According to Counsel, this revealed that Plot 675, the alleged suit property, does not exist as it falls on riparian land, and that these documents could not, despite due diligence, have been obtained earlier.
22. Reliance was placed on the case of *Kigo vs Attorney General & 4 others* [2025] KECA 26 where the Court emphasized that in cases where evidence lies outside an applicant's control, diligence is measured against the steps reasonably open to the applicant, rather than perfection of search.
23. Counsel submitted that the new evidence, comprising the certified Nairobi Block 190 map, the map allegedly used fraudulently by Scheme officials, and the Nairobi City Council's map are self-authenticating, reliable and issued by reputable institutions.
24. Reliance was also placed on the case of *Jirongo vs Soy Developers Ltd & 9 Others* [2020] KESC 38 (KLR) where the Supreme Court held that official archives carry inherent credibility and if exculpatory, must be admitted where they destroy the foundation of the respondents' case.



25. Counsel maintained that the additional evidence is material and had it been available at the hearing, may have led the Court to a different conclusion, as it directly addresses the true status of the suit property.
26. It was urged that admitting the evidence would serve the interests of justice without prejudicing the Plaintiff. Counsel contended that refusal to admit the documents would leave the record incomplete and risk a miscarriage of justice, whereas their admission would assist the Court in conclusively resolving all material issues in controversy.
27. Counsel for the Plaintiff submitted that the Applicant has not met the legal threshold for the admission of additional evidence after the close of the hearing. It was argued that introducing new evidence at this juncture would offend the rules of natural justice and infringe the Plaintiff's right to fair trial under Article 50 of *the Constitution*.
28. Counsel further submitted that no expert witness has been identified to produce or authenticate the documents in court. It was contended that the maps now sought to be introduced cannot be verified and differ from the one previously produced by the Defendant.
29. It was argued that admitting the documents would necessitate reopening the case, conducting a fresh hearing once again, and warranting the Plaintiff to amend his pleadings, thereby prejudicing the Plaintiff who has already disclosed his trial strategy.
30. Reliance was placed on the case of *Steyn vs Nsense* [2025] KEELC 3693 (KLR) on principles applicable in reopening a case, and on *Mohammed Abdi Mohamud vs Ahmed Abdullahi Mohamed & 3 others* [2018] eKLR where the Supreme Court set out the guiding principles for admission of additional evidence.
31. Counsel submitted that the Defendant could, with due diligence, have obtained the documents during the pendency of the case and before the hearing. It was noted that in his testimony on 21st January 2025, the Defendant confirmed that he became aware of the nature of the property as early as 2017-2018.
32. According to counsel, while the Defendant alleged that the Survey of Kenya delayed in issuing a certified map, no evidence of follow-up or reminder correspondence has been produced. Counsel argued that equity aids the vigilant, not the indolent.
33. It was reiterated that the Defendant served only two maps, none of which correspond with the map produced during the hearing. Reliance was placed on *Samuel Kiti Lewa vs Housing Finance Co. of Kenya Limited & Another* [2015] KEHC 3930 and *Rajni Kant Nathoo vs Edward Nthuli & 4 Others* [2020] KEELC 2341 (KLR) on the principles on reopening a case.
34. It was further submitted that the documents sought to be produced lack credibility as they do not resemble the map earlier produced by the Defendant. It was argued that the maps do not contain Plot No. 675, the subject of this suit and are therefore irrelevant to the dispute.
35. Counsel contended that the Defendant ought to have procured the maps prior to the hearing, particularly since the alleged fraud was within his knowledge. Reliance was placed on *Beatrice Ngunyo Ndungu & another vs Samuel K. Kanyoro & 2 others* [2017] KEELC 3025 (KLR).
36. It was argued that the Defendant is attempting to remove lacunae and fill gaps in his evidence after the close of the hearing. Reliance was placed on *Kigo vs Attorney General & 4 others* [2025] KECA 267 (KLR).



37. Counsel submitted that admitting the evidence would prejudice the Plaintiff and undermine the principles of the overriding objective, which requires the expeditious disposal of suits. It was contended that the Defendant has repeatedly delayed the proceedings through non-compliance and interlocutory applications.
38. Counsel argued that the present application offends the principles of finality of litigation, fair trial and procedural justice. Reliance was placed on *Samuel Kiti Lewa vs Housing Finance Co. of Kenya Limited & another* [2015] KEHC 3930, *Beatrice Ngonyo Ndungu & another vs Samuel K. Kanyoro & 2 others* [2017] KEELC 3025 (KLR) and *Too vs Tum* [2014] KEELC 512 (KLR).

Analysis and Determination

39. Having considered the Notice of Motion, the affidavits on record, and the submissions, the issue for determination is whether this Court should exercise its discretion to allow the Defendant to file additional evidence after the close of the hearing.
40. While neither the *Evidence Act* nor the Civil Procedure Rules provide an express framework for re-opening a case to admit additional evidence, Courts have developed guiding principles through judicial precedent.
41. In *Susan Wavinya Mutavi vs Isaac Njoroge & another* [2020] eKLR, the Court stated that the power to re-open a party's case and admit further evidence is a discretionary one, to be exercised judiciously and only in exceptional circumstances, where the ends of justice demand, and where the opposing party will not suffer prejudice incapable of compensation by an award of costs.

“Over the years, Kenya's superior courts and courts in the Commonwealth have developed principles which guide the exercise of jurisdiction to re-open a case and receive additional evidence in a civil trial court. First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty-bound to ensure that the proposed re-opening of a party's case does not embarrass or prejudice the opposite party. Second, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the court will not grant the plea. Third, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on the part of the applicant. Fourth, the applicant is required to demonstrate that the evidence he seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive. Lastly, the evidence must be apparently credible, though it need not be incontrovertible.”

42. The Supreme Court in *Mohammed Abdi Mahamud vs Ahmed Abdullahi Mohamed & 3 Others* [2018] eKLR expounded the guidelines governing the admission of additional evidence. Although the Court was addressing itself to the appellate jurisdiction, this Court is of the view that the principles enunciated therein are of equal application at the trial stage when a party seeks to re-open its case. The Supreme Court stated as follows:

“Taking into account the practice of various jurisdictions outlined above, which are of persuasive value, the elaborate submissions by counsel, our own experience in electoral litigation disputes and the law, we conclude that we can, in exceptional circumstances and on a case-by-case basis, exercise our discretion and call for and allow additional evidence to be



adduced before us. We, therefore, lay down the governing principles for 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 a 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.”

43. In *Raila Odinga & 5 Others vs Independent Electoral and Boundaries Commission & 3 Others* [2013] eKLR, the Supreme Court pronounced itself on the correct legal position where a Court is called upon to consider whether to admit or reject additional evidence. The Court stated:

“...The parties have a duty to ensure they comply with their respective time lines, and the Court must adhere to its own. There must be a fair and level playing field so that no party or the Court loses the time that he/she/it is entitled to, and no extra burden should be imposed on any party or the Court as a result of omissions or characteristics which were foreseeable or could have been avoided. The other issue the Court must consider when exercising its discretion to allow a further affidavit is the nature, context of the new material intended to be provided and relied upon. If it is small or limited so that the other party is able to



respond to it, then the Court ought to be considerate, taking into account all aspects of the matter. However, if the new material is so substantial involving not only a further affidavit but massive additional evidence, so as to make it difficult or impossible for the other party to respond effectively, the Court must act with abundant caution and care in the exercise of its discretion to grant leave for the filing of further affidavits and or admissions of additional evidence.”

44. In an application to re-open a case and admit additional evidence, the court in *Samuel Kiti Lewa vs Housing Finance Co. of Kenya Ltd & Another* [2015] eKLR, reviewed several authorities and observed that the Court’s discretion to re-open proceedings must be exercised judiciously, not capriciously, and only where good reason is shown, particularly where the evidence in question could not have been produced earlier, and its admission would not prejudice the other party.

“17. Uganda High Court, Commercial Division in the case *Simba Telecom –v- Karuhanga & Anor* (2014) UGHC 98 had occasion to consider an application to re-open the case for purpose of submitting fresh evidence. That court referred to an Australian case *Smith –versus- New South Wales* [1992] HCA 36; (1992) 176 CLR 256 where it was held:

“If an application is made to reopen on the basis that new or additional evidence is available, it will be relevant, at that stage, to enquire why the evidence was not called at the hearing. If there was a deliberate decision not recorded, ordinarily that will tell decisively against the application. But assuming that that hurdle is passed, different considerations may apply depending upon whether the case is simply one in which the hearing is complete, or one which reasons for the judgment have been delivered. In the latter situations the appeal rules relating to fresh evidence may provide a useful guide as to the manner in which the discretion to reopen should be exercised.”

18. The Ugandan Court in the case *SIMBA TELECOM* (supra) held thus:

“I agree with the holding in the case of *Smith Versus South Wales Bar Association* (1992) 176 CLR 256, where it was held that the question of whether additional evidence should be taken at the trial is considered separately from the question of whether the case should be reopened. Consequently even after the case has been reopened, the court retains its discretionary powers whether to admit any piece of evidence or not.”

20. 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.’

Based on the facts before me and in associating myself with this cited decision, I find that the Plaintiff cannot compel parties who never attended court to



testify by seeking to reopen his case and asking for witness summons to issue to them. It seems to me the Plaintiff is seeking to fill the gaps in his evidence. I opine that the reopening of this old matter will also cause unnecessary delay. In the circumstance, I decline to allow the said prayer.”

45. This Court is duly guided by the foregoing principles.
46. By way of background, the Plaintiff, through a Plaint dated 27th June 2016, sought a mandatory injunction compelling the Defendant to vacate Plot No. 675 Kayole Spring Valley Settlement Scheme. He further prayed for a permanent injunction restraining the Defendant from entering, trespassing and operating on the suit property, as well as general damages for trespass and loss of use.
47. The Plaintiff contends that he is the rightful and registered owner of the suit property, having purchased it from its previous owner, Kangiria Self Help Group. He contends that the Defendant has unlawfully entered the property and established a car wash business thereon without his consent.
48. The Defendant, in his Amended Statement of Defence and Counterclaim dated 2nd October 2023, disputes the existence of Plot No. 675 as private property, asserting instead that the land in question is riparian and that the scheme officials unlawfully created the same number to defraud unsuspecting buyers.
49. He avers that since 2001, he has lawfully conducted business on the land pursuant to permits issued by the Nairobi City Council. In his counterclaim, he maintains that his business had suffered losses occasioned by the Plaintiff’s disruptions. Accordingly, he seeks declaratory orders that the riparian land, on which his business stands, is lawful, a permanent injunction restraining the Plaintiff from encroaching or occupying the suit property and general damages.
50. The record confirms that the hearing of this matter took place on 9th July 2024 and on 21st January 2025. On the latter date, the Defendant testified, called his witnesses, tendered evidence, and closed his case, thereby marking the close of the hearing.
51. The Defendant has now moved the Court seeking leave to adduce additional evidence, which he contends was not available at the time of the Defence hearing. The evidence sought to be introduced comprises a certified map for Nairobi Block 190, a second map allegedly used fraudulently by Scheme officials and a third map from the Nairobi City Council showing the official demarcations and block numbers of the Kayole Spring Valley parcels. However, annexed to the present application are only two maps, the certified map of Nairobi Block 190 and the alleged fraudulent map.
52. This Court observes that contrary to the Defendant’s averments, no directions were ever issued by the Court requiring him to file a certified copy of the Nairobi Block 190 map. Additionally, by his own admission, the Defendant was aware, as early as 2017/2018, that the property was allegedly riparian land and that fraud had allegedly been perpetrated by the Scheme officials in its conveyance.
53. Indeed, this was the foundation of the Defendant’s Amended Defence filed in 2023. It follows, therefore, that the Defendant had ample opportunity to marshal his evidence before the hearing dates in October 2024 and January 2025. The Defendant’s present attempt cannot be excused as diligent conduct.
54. The Defendant has also argued that the credibility of the maps is self-evident. This Court is unable to agree. The evidentiary process demands that documents be subjected to scrutiny through cross-examination and other procedural safeguards. To admit them now would deprive the Plaintiff of his right anchored on Article 50(1) of *the Constitution*, which guarantees a fair and public hearing, and protected by the principles of natural justice.



55. As to the relevance of the documents sought to be adduced, this Court finds that the certified map of Nairobi Block 190 annexed is not only illegible, but also of little probative value in resolving the issues before it. Critically, the Defendant has not demonstrated any nexus between Nairobi Block 190 and Plot No. 675, the suit property in dispute. In the absence of clarity or connection, the documents cannot assist the Court in determining the real controversy between the parties.
56. In the premises, this Court is satisfied that the present application is an afterthought, brought too late in the day and intended merely to fill gaps in the Defendant's case after the close of the hearing. To allow it would not only offend the principles set out in the authorities cited, but would also undermine the integrity and finality of the trial process.
57. Accordingly, and for the reasons stated above, this Court finds no merit in the Defendant's application dated 26th May 2025. The same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 2ND DAY OF OCTOBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Mwangi for Nduta Maina for Defendant

Ms Wachera for Ngugi for Plaintiff/Respondent

Court Assistant: Tracy

