



Pamico Kenya Limited v Agricultural Finance Corporation & 3 others (Environment and Land Case 6 of 2017) [2025] KEELC 6890 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 6 OF 2017
MD MWANGI, J
OCTOBER 9, 2025**

BETWEEN

PAMICO KENYA LIMITED PLAINTIFF

AND

AGRICULTURAL FINANCE CORPORATION 1ST DEFENDANT

PJ DAVE FLOWERS LIMITED 2ND DEFENDANT

VICTORIA COMMERCIAL BANK LIMITED 3RD DEFENDANT

LAND REGISTRAR, KAJIADO 4TH DEFENDANT

RULING

(In respect of the Amended Notice of Motion application dated 7th April 2025 seeking to re-open the 1st Defendant's case pursuant to Article 159(2) of the Constitution of Kenya 2010)

Introduction

1. Before this Court for determination is the 1st Defendant's Amended Notice of Motion dated 7th April 2025 in which the Defendant/Applicant seeks the following substantive orders:
 - a. That the Defendant's case be re-opened and the Defendant, being the only witness, be allowed to produce further additional documents.
 - b. That leave be granted to the Defendant to file additional documents which are crucial to the Defendants' case.
 - c. That the costs of this Application be borne by the Defendant.
2. The application is supported by the grounds set out on its face and the Supporting Affidavit of John Kithinji, the Legal Officer of the 1st Defendant/Respondent, sworn on the same date.



3. The 1st Defendant principally contends that its newly appointed advocate, having come on record after the previous advocate ceased acting, did not have the opportunity to participate in the pre-trial conference nor confirm whether all necessary documents had been filed. It is argued that several crucial documents touching on the auction, sale and transfer process, which form the substratum of the dispute, were inadvertently omitted, and unless admitted, the 1st Defendant stands to suffer grave prejudice. The 1st Defendant invokes the constitutional right to a fair hearing under Article 50 of the Constitution, as well as the provision of Article 159 of the Constitution and the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act, urging the Court to exercise its discretion in favour of admitting the additional evidence.
4. The application is opposed. The Plaintiff/Respondent filed Grounds of Opposition pursuant to Order 51 Rule 14(1) of the Civil Procedure Rules and a Replying Affidavit sworn by its director, in which it is contended inter alia that the application is frivolous, incompetent and an abuse of the court process. The Plaintiff asserts that the 1st Defendant only sought to introduce new documents after the close of cross-examination of its sole witness, which demonstrates negligence and lack of due diligence. It is the Plaintiff's position that the application is an afterthought brought with unreasonable delay and is designed to prolong litigation in a matter that is already at an advanced stage.
5. The Plaintiff further avers that the documents sought to be introduced are neither new nor probative, but rather an attempt to fill gaps in the 1st Defendant's case and ambush the Plaintiff at the tail end of proceedings. It is also contended that the 1st Defendant was always aware of the existence of the said documents, having been requested to produce them as early as March 2023, but deliberately failed or neglected to do so during pre-trial. According to the Plaintiff, the purported change of advocates is a tactical ploy to justify reopening the case, and granting the orders sought would undermine the principles of finality of litigation, occasion undue delay, and cause prejudice to the Plaintiff. The Plaintiff therefore urges this Court to dismiss the application with costs.

Analysis and Determination

6. Having considered the application, the affidavits on record, the rival arguments advanced by the parties, and the law applicable, this court finds that the main issue arising for determination is whether the 1st Defendant has laid a sufficient basis to warrant the reopening of its case and to be allowed to introduce additional documents at this stage of the proceedings.
7. The starting point is the constitutional imperative under Article 50(1) of the Constitution of Kenya which provides that:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
8. Similarly, Article 159(2)(d) of the Constitution enjoins this Court, in exercising judicial authority, to be guided by the principle that:

“Justice shall be administered without undue regard to procedural technicalities.”



9. The *Civil Procedure Act* also accords this Court with wide discretion under Sections 1A, 1B and 3A to make such orders as may be necessary for the ends of justice. Section 1A(1) particularly provides that:

“The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.”

10. Courts have consistently emphasized that mistakes of counsel, however negligent, should not be visited upon an innocent litigant. In the case of *Belinda Murai & Others v Amos Wainaina* [1979] eKLR, Madan J stated thus:

“A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed by senior counsel, though in the case of junior counsel the court might feel compassionate more readily. The door of justice is not closed because a mistake has been made by a lawyer of experience who ought to have known better. The court may not condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistakes which is politely referred to as erring, in their interpretation of laws and adoption of a legal point of view which courts of appeal sometimes overrule. It is also not unknown for a final court of appeal to reverse itself when wisdom accumulated over the course of years since the decision was delivered so dictates. It is only because it is a court of last resort which can do so.”

11. The Court of Appeal in *Philip Chemwolo & Another v Augustine Kubende* [1986] eKLR, went further and pronounced that:

“Blunders will continue to be made from time to time, and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits. I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”

12. It is not disputed that the 1st Defendant/Applicant was served with a Notice to Produce on 10th March 2023 and a further Notice to Produce on 27th March 2023. It is also not in dispute that the 1st Defendant only appointed its present counsel, Ms. Kinoti Nancy, on 24th February 2025, long after the pre-trial proceedings had been concluded and after the previous advocate ceased from acting for the 1st Defendant. The explanation advanced by the 1st Defendant is that its new counsel only discovered, during the hearing, that crucial documents relating to the auction, sale and transfer of the suit property had not been filed by the former advocate. This Court is cognizant of the fact that the change of advocates, in the circumstances of this case, may have genuinely presented difficulties to the 1st Defendant in terms of adequately preparing its case.

13. The Plaintiff has argued that the 1st Defendant was at all times aware of the existence of the documents and even failed to comply with the Notices to Produce served on its advocates earlier on. While that argument is true, the Court is nonetheless persuaded that the omission by the previous advocate should not be visited upon the litigant, especially where the evidence sought to be introduced goes to the very root of the dispute and has a direct bearing on the substantive issues for determination. To shut out



such evidence at this stage would in my view amount to denying the 1st Defendant the right to a fair hearing contrary to the dictates of Article 50(1) of the Constitution.

14. I am not oblivious to the Plaintiff's concern that litigation must come to an end and that the reopening of the Defendant's case may occasion delay. The critical balancing act therefore must be in ensuring that while the right to a fair hearing is preserved, the other party is not unfairly prejudiced by the reopening of the case.
15. In the present matter, the 1st Defendant has undertaken that the documents sought to be introduced are not bulky, and that the Plaintiff has long been aware of their existence. In any case reopening the case will still allow the Plaintiff the opportunity to cross-examine on the new evidence. The prejudice alleged by the Plaintiff is therefore, in my view, curable by an award of costs and by allowing sufficient time for the Plaintiff to respond to the additional documents.
16. In the premises, I am satisfied that the 1st Defendant has laid a sufficient basis for the reopening of its case and for the admission of the additional documents. The interests of justice and fairness outweigh the procedural lapses complained of, and the Court is minded to exercise its discretion in favour of the 1st Defendant.
17. The Amended Notice of Motion dated 7th April 2025 is therefore found to have merit. Accordingly, the Court makes the following orders:
 - a. That the 1st Defendant's case is hereby re-opened.
 - b. That the 1st Defendant is granted leave to file additional documents, limited to those relating to the auction, sale and transfer process, within fourteen (14) days from the date hereof.
 - c. That upon filing and service of the additional documents, the Plaintiff shall be at liberty to file any supplementary documents in response within fourteen (14) days of service, and to recall any witnesses, if necessary, for purposes of examination on the said documents.
 - d. The Plaintiff shall be entitled to the costs occasioned by this application, assessed at Kshs. 30,000/- which shall be paid by the 1st Defendant in the next 30 days from the date of this ruling.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 9TH DAY OF OCTOBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Watitu for the Plaintiff/Respondent (h/b for Ms. Wangare)

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

