



**Maestro Credit Management Ltd & 2 others v Kawangware Cinema Ltd & 4 others
(Environment & Land Case 85 of 2020) [2025] KEELC 4427 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4427 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 85 OF 2020**

CG MBOGO, J

JUNE 12, 2025

BETWEEN

**MAESTRO CREDIT MANAGEMENT LTD 1ST PLAINTIFF
BENEFICIAL ASSURANCE COMPANY LTD 2ND PLAINTIFF
MINI HOLDINGS LTD 3RD PLAINTIFF**

AND

**KAWANGWARE CINEMA LTD 1ST DEFENDANT
DAGORETI SOUTH NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND COMMITTEE 2ND DEFENDANT
FRANCIS MIGWI, MUNENE MEJA WANJIRU, FRANCIS WAINAINA KIRUI
(SUNG AS CHAIRMAN, SECRETARY AND TREASURER OF DAGORETTI
DISTRICT LAND OWNERS WELFARE ASSOCIATION - RIRUTA SATELLITE
BRANCH) 3RD DEFENDANT
ALEX KINUTHIA, JAMES NJOROGE, ROBERT GACHECHE; (SUNG AS
CHAIRMAN, SECRETARY AND TREASURER OF NDURARUA JUA KALI
ASSOCIATION) 4TH DEFENDANT
THE CHIEF LAND REGISTRAR 5TH DEFENDANT**

RULING

1. Before me is the notice of motion dated 24th April, 2025 filed by the 3rd defendant/applicant, and it is expressed to be brought under Sections 1A, 1B, 3A and 63 of the [Civil Procedure Act](#) and Order 51 Rule 1, Order 3 Rule 2 and Order 11 of the Civil Procedure Rules seeking the following orders: -

1. Spent.



2. The 5th defendant's bundle of documents titled "5TH Defendants Supplementary List Of Witnesses" dated 30th October, 2024 be and is hereby expunged from the court record being filed after close of pleadings devoid of leave to file out of time.
 3. Alternatively, the 5th defendant's documents titled "5TH Defendants Supplementary List Of Witnesses" be admitted into evidence and, the 1st, 2nd, 3rd and 4th defendant be and are hereby granted corresponding leave to file and serve any additional documents out of time, if any, as well as witness statement if any and same to be filed and served within 14 days from the date of the ruling hereof.
 4. Costs of this application be provided.
2. The application is premised on the grounds inter alia that the 5th defendant filed a supplementary list of witnesses dated 30th October 2024 after close of pleading without seeking leave of the court.
 3. The application is supported by the affidavit of Francis Migwi, the chairman of the 3rd defendant. The 3rd defendant deposed that the 5th defendant may have missed the opportunity to file the documents at the point required, however, the same contains new information, and there is need to file further documents by the other parties. He deposed that it is trite law that all new evidence or additional documents filed out of time ought not to be admitted unless leave is granted.
 4. The 3rd defendant deposed that extension of time is discretionary, and that if the court is inclined to allow the impugned documents into evidence, it should follow that the same courtesy is extended to all the defendants. Further, that in their possession are documents inadvertently left out, and that the intended admission into the record will not be prejudicial to all the parties since there will be an opportunity for cross-examination at defense hearing.
 5. In response and opposition to the application, the 3rd plaintiff filed its unsworn and undated replying affidavit signed by Elka K. Motanya. In this affidavit, it was deposed that the documents filed by the 5th defendant are crucial to the just determination of the suit. Further, that these documents were filed and served as early as October 2024, and that the 3rd and 4th defendants have had sufficient time to review the documents but they have failed to do so. That despite being given time to respond to the evidence filed by the 5th defendant, the 3rd and 4th defendants have failed to abide by the directions of the court issued in three previous court attendances.
 6. The 3rd plaintiff deposed that it is in the interest of justice that the documents filed by the 5th defendant are admitted, and that any prejudice can be remedied by granting leave to the 1st, 2nd, 3rd and 4th defendants to respond to the 5th defendant's evidence, if necessary.
 7. This court directed that the application be canvassed by way of written submissions. None of the parties filed their written submissions. Be that as it may, I have considered the application and the reply thereto. The issue for determination is whether the application has merit.
 8. In this application, the 3rd defendant seeks the order to expunge from record the pleadings filed by the 5th defendant, or in the alternative, leave to file their additional documents. The 3rd plaintiff on the other hand contended that the documents filed by the 5th defendant are crucial to this case and ought not to be expunged. In hind sight, it seems that the 3rd plaintiff was agreeable to the 3rd defendant being granted leave to file their additional documents. While I observe that the application is largely unopposed, it would only serve justice to grant the 3rd defendant leave to file their additional documents as compared to expunging from the record the documents filed by the 5th defendant.



9. From the above, I find merit in the notice of motion dated 24th April, 2025, and it is hereby allowed in terms of prayer 3 only. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 12TH DAY OF JUNE, 2025.

HON. MBOGO C.G.

JUDGE

12/06/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Allan Kamau for the 5th Defendant

Mr. Onganyi holding brief for Mr. Onsembe for the Applicant

Ms. Ngei for the 2nd Defendant

