



REPUBLIC OF KENYA



Gospel Sanctuary Ministry v Mwaura (Environment and Land Case 37 of 2022) [2025] KEELC 7608 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7608 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 37 OF 2022**

JA MOGENI, J

NOVEMBER 4, 2025

BETWEEN

GOSPEL SANCTUARY MINISTRY PLAINTIFF

AND

STEPHEN THUAGI MWAURA RESPONDENT

RULING

1. Once the Plaintiff/Applicant had testified, the Counsel for the Applicant made an oral application on 04/11/2025 seeking leave from Court to be allowed to file a Supplementary Affidavit before the 2nd Plaintiff witness testified.
2. The Counsel for the Defendant vehemently opposed the application noting that the Supplementary Affidavit will be used to fill the gaps that have emerged during cross-examination.
3. In response Counsel for the Applicant laid out the following to be the grounds upon which the oral application is based upon:-
 - i. That the Court as part of being a Court of law is also a Court of justice.
 - ii. No prejudice shall be occasioned to the Plaintiff if the Supplementary Affidavit is filed.
 - iii. For interest of justice, it is only proper that all the evidence is brought to Court to allow the Court make a determination having knowledge of all the information.
 - iv. That the Defendant has not yet testified and he will have an opportunity to respond to the issues that will be raised in the Plaintiff's case.
 - v. Under the Oxygen Principle the roles of the Court is to do justice and not just focus on technicalities.



4. The Court in a rare gesture allowed the Defendant’s Counsel to still respond to the grounds alluded to by the Applicant’s Counsel. The Counsel for the Defendant stated that when this matter was fixed for hearing the Plaintiff’s Counsel was present. Also, the Counsel has not told the Court which documents she wants to file and why it was not filed earlier. Further that litigation cannot be done in piecemeal.
5. The Court has carefully considered the oral application and the oral response from the Defendant’s Counsel. I find that the only issue for determination is: Whether the Applicants have met the threshold for the exercise of discretion in their favour.
6. Order 3 Rule 2 of the Civil Procedure Rules provides as follows:-

“All suits filed under Rule 1(1) including suits against the government, except small claims, shall be accompanied by-

- a. The Affidavit referred to under Order 4 Rule 1(2);b
- b. A list of witnesses to be called at the trial;
- c. Written statements signed by the witnesses excluding expert witnesses; and
- d. Copies of documents to be relied on at the trial including a demand letter before action.

Provided that the statement under sub rule (c) may with the leave of the Court be furnished at least fifteen days prior to the trial conference under Order 11.”

7. Order 7 Rule 5 of the Rules gives similar requirements where parties file their Defences and/or a Counterclaim. The same provides as follows;

“Documents to accompany Defence or Counterclaim [Order 7, rule 5]. The Defence and Counterclaim filed under rule 1 and 2 shall be accompanied by—

- (a) an Affidavit under Order 4 rule 1(2) where there is a counterclaim;
- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses except expert witnesses; and
- (d)copies of documents to be relied on at the trial.”

8. Provided that statements under sub-rule (c) may with leave of the Court be furnished at least fifteen (15) days prior to the trial conference under Order 11.

9. It is a requirement under Order 11 Rule 3 of the Rules for parties to file and serve the pre-trial questionnaire as provided in Appendix B to the Rules, 10 days after the closure of the pleadings. The Court can also make directions to ensure that parties comply with procedural requirements before commencement of hearings.

10. Having outlined the above the most critical consideration should be to ensure justice. In the case of Johana Kipkemei Too v Hellen Tum (2014) eKLR Justice Sila Munyao persuasively stated thus; -

“The Court has a constitutional mandate to ensure that a trial will be fair and therefore retains the power to disallow one party from tabling evidence that was not provided to the other party as contemplated by the rules. This was indeed the reasoning of the Supreme Court in the case of Raila Odinga & 5 Others v IEBC & 3 Others, Supreme Court of Kenya, Petitions



Nos. 3,4 and 5 of 2013 (2013) eKLR, where in a presidential electoral dispute, the Supreme Court declined to allow additional evidence filed outside the contemplation of the rules. This however is not to say, that the Court can never under any circumstances, permit a party to adduce additional evidence, that was not furnished to the other party as provided under the rules. The Court as a shrine of justice, has a mandate to do justice to all parties and not to be too strictly bound by procedural technicalities. This flows from the provisions of Article 159(2)(d) of *the Constitution*. Where such evidence can be adduced, without causing undue prejudice to the other party, the Court ought to allow the application, so as to allow such party, the opportunity to present his case in full. The Court may consider various factors including, but not restricted to, the earlier availability of the witness, the discovery of a new document, and the stage of the proceedings at which the additional evidence is sought to be introduced. If for example, the trial has not started, little prejudice may be caused to either party if one is permitted to introduce additional evidence. The prejudice to the other party no doubt increases as the trial progresses. But it is up to each Court to weigh the surrounding circumstances of each case, and determine whether it will be in the interests of justice, to allow such evidence to be tendered, though outside the time frame provided by the rules.”

11. In the case of *Anne Mumbi Hinga v Gaitho Oil Limited* (2013) eKLR, where Nyamweya J stated as follows: -

“I would like to add that the provisions of the Civil Procedure Rules are not cast in stone and the Court is enjoined by Article 159 of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act* to ensure that in implementing the rules we dispense substantive justice, and ensure that there is just, expeditious proportionate and affordable resolution of civil disputes. To this end, this Court is given inherent power under Section 3A of the *Civil Procedure Act* to make such orders as may be necessary for the ends of justice.”

12. This Court cannot therefore prevent the Plaintiff from stating its case, even if the effect as alleged by the Defendant is to fill holes that may have arisen from cross-examination. It is the Plaintiff’s right to fill such holes as she seeks substantive justice from this Court. The only limitation to the exercise of this right would be if there was prejudice to be caused to the Defendant in allowing the Plaintiff to file additional witnesses and documents. It is my view that as the Plaintiff is yet to close their case, the Defendant will have the opportunity to cross-examine any additional witnesses she calls, to recall any witnesses who have already given evidence for further cross-examination, and to file any additional statements and documents in response.
13. The question therefore is whether these additional documents will cause any prejudice to the Defendant if allowed on record. I am not persuaded that it will.
14. I have looked at the prayers being sought by the Applicant. The Originating Summons filed dated 3/11/2022 seeks to have this Court declare that the suit property Kiambaa/Kihara/4083 measuring 102 by 41 feet has vested in the Plaintiff as a purchaser for value. The Plaintiff pray for an injunction against the Defendant and thus Judgement against the Defendant.
15. The Defendant filed a Replying Affidavit sworn on 20/04/2023 and denies the averments raised in the Originating Summons and state that he never entered into any Sale Agreement with the Applicant but that the Church was invited to pitch tent on the land as a temporary measure following his religious and spiritual persuasion and conviction to allow the Church set up a Church structure after they had been evicted from the previous location and were homeless.



16. In answering the question as to whether the admission of the supplementary documents will cause any prejudice to the Defendant. I am inclined to take cognizance of the fact that the Defence case is yet to commence and neither have the Plaintiff closed their case. As such it cannot be stated that litigation of this case is at an advanced stage in a way that could cause any prejudice to the Defendant. The Defendant through Counsel on record will have the opportunity to cross examine on the contents of the said documents. The further Supplementary List and Bundle of Documents would therefore not be prejudicial to the Defendants. The issues raised by both parties in the pleadings are weighty, and as such the Court opines that it will allow the Applicant to exchange documents alluded to which will shed the necessary light in determining the history and ownership of the suit property.
17. The overriding objective of this Court as stipulated under Section 3 of the [Environment and Land Court Act](#) is to facilitate the just, expeditious, proportionate and accessible resolution of disputes. The Court is duty bound to do justice to all parties. I am guided by the sentiments of Honourable Justice Kanyi Kimondo in *Steven Kariuki v George Mike Wanjohi & 2 Others* (2013) eKLR: -

“Once seized of the dispute, the Court is enjoined by Article 159(2) (d) of [the Constitution](#) to do substantial justice to the disputants expeditiously and without undue regard to technicalities. Rules of procedure have aptly been described as handmaidens of justice: not mistresses. See *Edward Steven Mwititi v Peter Irungu & 2 Others* (No. 2) Nairobi High Court ELC 105 of 2011(2012) eKLR. This overriding principle is a guiding beacon of the Court. “The principal aims of the overriding objective includes the need to act justly in every situation; the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the Courts by ensuring that the principle of equality of arms is maintained and that as far as it is practicable, to place the parties on equal footing.”
18. The basic principles on independence of the Judiciary dictate that matters before Court are decided impartially and in accordance with the law. Impartiality in my humble opinion enjoins the provisions of Article 159[2][d] of [the Constitution](#) and which dictates that each party is given an avenue to ventilate their case regardless of the procedural technicalities that might arise. In *Esther Wambui Njenga v Harrison Mwangi Nyota & 2 Others* [2018] eKLR the Court opined that it is fair to allow each party to fully ventilate their case if for no other reason but so that the whole truth is revealed.
19. Based on the foregoing, the Supplementary List of Documents by the Plaintiff is allowed. The Defendants will have the costs of the oral application.
20. Filing and Exchange of the Supplementary List to be done within seven (7) days from the date hereof. Any documents filed after 17/11/20225 shall stand automatically expunged from the Court record.
21. Mention to confirm filing and exchange of the documents will be on 25/02/2026.
22. It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 4TH DAY OF NOVEMBER, 2025.

.....

**MOGENI J
JUDGE**

In the presence of:-



Ms. Wambua for the Plaintiff
Mr. Omondi for the Defendant
Mr. Melita – Court Assistant

