



Mucheru (Formerly Known as Gideon Magu Ngugi) v Esbon & 2 others (Environment and Land Case E121 of 2023) [2025] KEELC 7988 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7988 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E121 OF 2023
TW MURIGI, J
NOVEMBER 5, 2025**

BETWEEN

KEERU NGUNGI MUCHERU (FORMERLY KNOWN AS GIDEON MAGU NGUGI) PLAINTIFF

AND

PETER CHEGE ESBON 1ST DEFENDANT

NAIROBI CITY COUNTY 2ND DEFENDANT

CHARLES MAINA CHUI JOHN 3RD DEFENDANT

RULING

1. By a Notice of Motion dated 17th March 2025, brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 3 of the *Environment and Land Court Act*, Order 51 Rules 1, 4 and 10 of the Civil Procedure Rules and Articles 50(1), 159(2)(a) (d) and 162(2)(b) of *the Constitution* of Kenya, the Applicant seeks the following orders:
 - a. Spent.
 - b. That the Honourable court enlarges time and grants leave to the Plaintiff/Applicant to file a supplementary document, namely, an identification Report dated 3rd March 2025, and a supplementary witness statement outside the close of pleadings.
 - c. That any other order or relief that this Honourable Court may deem fit and just to grant.
 - d. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Peter Mburu sworn on even date.



The Applicants' Case

3. The deponent averred that while preparing for the case, an identification report on the 3rd Defendant's national identity card confirmed that ID number xxxxxxxx belongs to Musee Muli and not the 3rd Defendant.
4. He argued that ID number xxxxxxxx, which supposedly belongs to the 3rd Defendant, appears in his letter of allotment and sale agreement, indicating fraudulent conduct by the 3rd Defendant. He also stated that granting the orders sought would not prejudice the Respondents.

The 3rd Defendant's Case

5. The 3rd Defendant filed two replying affidavits dated 1st April 2025 in opposition to the application.
6. He averred that according to his identity card, his name is Charles Maina Chui John, ID No. xxxxxxxx. He further averred that the advocate who drafted the sale agreement dated 17th December, 2002, mistakenly listed his ID as xxxxxxxx instead of xxxxxxxx. He asserted that he had legally acquired the property, unlike the Plaintiff, who has no evidence to show how he had acquired the property.
7. He maintained that Peter Mburu is a stranger to the proceedings as he has not filed any pleadings to establish his position.
8. In conclusion, he urged the court to dismiss the application with costs.
9. On 14th May 2025, the Applicant made an oral application to strike out the 3rd Defendant's replying affidavit on the grounds that it offends the provisions of the Oaths and Statutory Declaration Act. He asserted that the replying affidavit filed on 19th May 2025 bears a different signature to the one filed on 4th April 2025. Subsequently, on 9th October 2025, the Court struck out the 3rd Respondent's replying affidavit dated 1st April 2025 which was filed on 4th April 2025.
10. The application was canvassed by way of written submissions.

The Plaintiff's Submissions

11. The Plaintiff filed his submissions dated 4th July 2025.
12. On behalf of the Plaintiff, Counsel outlined the following issues for the court's determination:-
 - a) Whether the Plaintiff has made a case for leave to file additional documents.
 - b) Whether this Honourable court should strike out the 3rd Respondent's replying affidavits.
13. On the first issue, Counsel relied on Article 159(2)(d) of *the Constitution* to submit that courts should administer justice without undue regard to procedural technicalities. It was submitted that Order 11 of the Civil Procedure Rules is intended to expedite the hearing of a case and not to hinder a party from filing further documents or statements with leave. Counsel relied on the Supreme Court case of Mahumud v Mohammad & 3 others (Petition 7 & 9 of 2018 (consolidated) (2018) KESC 62 (KLR) 28 September 2018 (Ruling) to submit on the principles governing the admissibility of supplementary evidence.
14. It was submitted that the Identification Report dated 3rd March 2025 is a crucial document because it will demonstrate that the 3rd Defendant is a stranger to the suit property, as their claim is based on forged documents. It was submitted that the supplementary witness statement and documents to be presented by the Plaintiff meet the threshold set out in the case of Mohammed Abdi Mohamud supra.



15. It was further submitted that the supplementary document and witness statement are not voluminous, complex, or technical in nature and therefore meet the criteria set out by the Supreme Court. Counsel argued that the 3rd Defendant will not suffer any prejudice if the orders sought are granted, as he will have the opportunity to cross-examine the witness on the additional document.
16. It was also submitted that the 3rd Defendant would not suffer any prejudice since the case has not yet been heard. To support this argument, reliance was placed on the case of *Too v Tum* (Environment & Land Court Case 975 of 2012 (2014) KEELC 512 (KLR) 27 January 2014 (Ruling).
17. Counsel asserted that the overriding principle of achieving justice outlined in Article 159(2)(d) of *the Constitution*, along with Sections 1A, 1B, 3A, and 3B of the *Civil Procedure Act* should outweigh the narrow interpretation of the Civil Procedure Rules. To support this point, Counsel relied on the case of *Pinnacle Projects Limited v Presbyterian Church of East Africa, Ngong Parish & another* (2019) KEHC 9967 (KLR) and *David Kimani Gitau v Francis Wainaina* (2016) KEHC 16727 (KLR).
18. Regarding the second issue, Counsel submitted that the two replying affidavits sworn on 1st April 2025 are incurably defective and should be struck out for violating Section 4(1) of the Oaths & Statutory Declaration Act.
19. It was submitted that the first replying affidavit was commissioned by Gibson Gisore, an advocate from the firm of Karanja & Gisore Advocates, who are the advocates on record in these proceedings. Counsel argued that statutory requirements are not procedural technicalities; therefore, the defect in the 3rd Replying affidavit cannot be cured by Article 159 (2)(d) of *the Constitution*.
20. It was further argued that the 3rd Respondent's replying affidavit, filed on 19th May 2025, bears a different signature from the one filed on 4th April 2025, and therefore, it should be struck out. Counsel relied on Order 19 Rule 6 of the Civil Procedure Rules to submit that the court has the authority to strike out affidavits that are scandalous, irrelevant, or oppressive.

The 3rd Defendant's Submissions

21. The 3rd Defendant filed his undated submissions.
22. On his behalf, Counsel outlined the following issues for the court's consideration:-
 - a) Whether the Plaintiff's reliance on the Identification Card typographical error amounts to material misrepresentation capable of affecting the validity of the suit against the 3rd Defendant/Respondent.
 - b) Whether the 3rd Defendant has engaged in fraud and forgery of documents
 - c) Whether the 3rd Defendant was issued with a letter of allotment and subsequently entered into a sale agreement using a false identification number
 - d) Whether the Plaintiff's application was brought in a timely manner
 - e) Whether the Kenya Gazette contains any notice of change of ownership to the Plaintiff
 - f) Whether the Plaintiff obtained the land or filed the case through fraudulent means.
 - g) Whether the 2nd Defendant/Respondent recognizes the Plaintiff's ownership.
23. Counsel urged the court to dismiss the Plaintiff's suit in light of the circumstances of the case and to issue a permanent injunction restraining the Plaintiff from interfering with the suit property.



Analysis and determination

24. Having considered the application, the respective affidavits, and the rival submissions, the only issue that arises for determination is whether the Plaintiff should be granted leave to file additional documents.

25. The Applicant seeks leave to file an additional document out of time.

Order 50 Rule 6 of the *Civil Procedure Act* provides as follows:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by summary notice or by order of court, the court shall have the power to enlarge such time upon such terms (if any) as the justice of the case may require and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed provided that the costs of any application to extend such time and any order made thereon shall be borne by the parties making such application unless the court orders otherwise.”

26. The court’s discretion to extend time is intended to facilitate a fair hearing.

27. In the matter at hand, the Plaintiff argued that the identification report is crucial as it will demonstrate forgery on the part of the 3rd Defendant.

28. Both parties have extensively presented their arguments, which I have duly considered. In an application for enlargement, such as the one before me, the primary consideration for the court is to ensure that justice is served for all parties and that they are allowed to present their case.

29. In the case of P H Ogola Onyango t/a Pittsconsult Consulting Engineers v Daniel Githegi t/a Quantalysis (2005) eKLR, the court held that:-

“Indeed, discovery, along with interrogatories and inspection, is a pre-trial procedure. They are all meant to facilitate a quick and expeditious trial of the action. Though the court no doubt has jurisdiction to allow a party to introduce a document or documents once the trial has begun.”

30. Based on the material before me, I find it is in the interest of justice to allow the Plaintiff to file the supplementary document and witness statement. The 3rd Defendant will not be prejudiced, as the case has not yet been heard. Nonetheless, he will have an opportunity to cross-examine on the new document. The primary goal is to ensure justice is served for both parties.

31. In the end, I find that the application dated 17th March 2025 is merited and the same is hereby allowed in the following terms:-

- a) The time within which the Plaintiff/Applicant is to file the supplementary document and witness statement is hereby enlarged.
- b) Leave is hereby granted to the Plaintiff to file the supplementary document and witness statement within 14 days from the date hereof.
- c) The 3rd Defendant is granted leave to file additional documents/witness statements within 14 days of service by the Plaintiff.
- d) Costs in the cause.



RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 5TH OF NOVEMBER, 2025.

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HON. T. MURIGI

JUDGE

In the presence of:-

Kisigwa for the Plaintiff

