



Sigma Feeds Limited v Mertcourt Hostels Limited (Environment and Land Case 420 of 2008 & 740 of 2011 (Consolidated)) [2025] KEELC 5723 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5723 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 420 OF 2008 & 740 OF 2011 (CONSOLIDATED)**

AA OMOLLO, J

JULY 31, 2025

(AS CONSOLIDATED WITH ELC 740/2011)

BETWEEN

SIGMA FEEDS LIMITED PLAINTIFF

AND

MERTCOURT HOSTELS LIMITED DEFENDANT

RULING

1. By way of a notice of motion application dated 18th March 2025, the Plaintiff is seeking leave to be allowed to file and adopt as part of its evidence the further expert witness statement of Daniel Dimba dated 7th March 2025. The Plaintiff averred that the expert witness will address the issues belated raised by the 1st Defendant's additional evidence tendered after the plaintiff had closed its case.
2. The Plaintiff submitted that this court has discretionary powers by virtue of the overriding objectives under sections 1A, B and 3A of the *Civil Procedure Act* to grant the leave. It pleads that the Court should take note that the case involves a number of complex issues of facts, law and tests the administration of justice. It quoted sections 29 of the *Appellate Jurisdiction Act*, order 42[27] and [28] of the *Civil Procedure Code* to support the arguments for exercise of discretion.
3. The Applicant also quoted the provisions of article 50 of the *Constitution* which states thus;
 - [1] 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.
 - [2] Every accused person has the right to a fair trial.
4. The application was opposed by grounds of opposition filed by the 1st and 4th Respondents and Replying affidavit of the 8th and 9th Respondents. The grounds stated inter alia;



- a. The application is an abuse of the court process
 - b. There was no additional evidence adduced by the 1st Defendant's auditor statement dated 12.2.2025 save for attachment no.3.
 - c. The application is a ploy by the Plaintiff to re-structure its case
5. At the time this application was filed, the Plaintiff had closed its case and all the Defendants' witnesses testified. It was at the stage where the court was to give directions for filing of written submissions. From the record, both the Plaintiff and the 1st and 4th Defendants filed financial expert reports and called the said experts to produce those reports.
 6. Under order 18 rule 1 of the Civil Procedure Rules, it provides that the Plaintiff has the right to begin during the hearing. Rule 10 provides only for recall by the Court of a witness who has testified and has been examined. In this case, the Plaintiff is not applying for recall but rather to adduce further evidence.
 7. It is also trite law that when a party is sued, they have a right to defend the claim. Once the Plaintiff filed an expert report, the Defendants had a choice to call an expert witness to challenge the Plaintiff's report and which they did. The Plaintiff now wishes to call file additional evidence after parties have closed their cases which in my view is intended to fill what gaps in its case.
 8. This court indeed has discretionary powers but which discretion must be exercised judiciously. Before the 1st Defendant's witness took the stand, the Plaintiff became aware of the alleged expert report which they now wish to respond to. Through his counsel, they allowed the evidence of that witness to be taken, cross-examined the said witness and the hearing of the other Defendants witnesses also proceed.
 9. What this means is that the application has been brought too late in the day and the explanation that the report was filed after they closed their case does not hold any water. If the Plaintiff was diligent, he would have made the application before the commencement of the defence case and as soon as they were served. Article 50[2] of the Constitution cited is in favour of the Defendants who are equated as the persons accused. A plaintiff cannot be an accused person in its own case.
 10. Similarly, the persuasive authority of Wachira Karani v Bildad Wachira [2016] KEHC 6334 [KLR] the Plaintiff has cited does not speak to re-opening of a case where both parties have received opportunity to present their cases.
 11. In conclusion, I find no merit in the application and proceed to dismiss it with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2025

A. OMOLLO

JUDGE

