

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC CASE NO. 53 OF 2015**

**PIRY JOHNSTONE MUYE**

.....**APPLICANT/RESPONDENT**

**VERSUS**

**JAFFER SHARRIF alias**

**SHARIF OMAR**

**MOHAMED.....**

.....

**RESPONDENT/APPLICANT**

**RULING**

1. The Notice of Motion dated 8<sup>th</sup> May 2025 seeks the following orders:

- a. The defendant's case be reopened and heard for purposes of adducing documentary evidence;
- b. That the court be pleased to recall the defendants witness Jaffer Omar Shariff for further examination-in-chief and for further cross-examination and re-examination respectively over the documentary evidence;
- c. That the court do grant to the plaintiff leave to annex any further evidence they may wish to respond to their formation documentary evidence;
- d. This court do grant any other order that may deem fit and just.
- e. That costs be in the cause.

2. The application is premised on the grounds that:

- a. The matter was filed against the wrong party, injunction orders obtained and the plaintiff's hearing was conducted and completed;
- b. As a result of the confusion the defendant's pleadings were filed appropriately after the plaintiff already testified and closed his case;
- c. The defendant/applicant hearing appointed new counsel and the matter proceeded for hearing of the defence case on 28<sup>th</sup> April 2025;
- d. During the said hearing, numerous unsubstantiated statements were made against the defendant, that he had fraudulently acquired title and attempted to bribe council for the respondent;
- e. That the defendant has relocated residences across various counties and he admitted the sum of the documents preceding the issues of the title were inadvertently misplaced;
- f. That even the plaintiff's counsel had difficulty in accessing official government records relating to the suit property including a search from the land registry;
- g. After the hearing, a letter dated 30<sup>th</sup> April 2025 was addressed to the Director Of Surveys in Nairobi and the Chief Lands Registrar in Mombasa;

- h. Counsel for the applicant visited Survey of Kenya and the Records Departments at Ardhi House on 30<sup>th</sup> of April 2025 and on various other dates and officials there declined to receive the letter until the files were located;
  - i. Eventually the files were found at the Archives Department of the Surveys of Kenya and the historical records of the ground floor of Ardhi House relating to LR number 22036 and LR number 11365/3 stroke MN and the letter was received.
  - j. That the documents were exceptionally difficult to obtain from the Surveys of Kenya and the files were also misfiled at the Mombasa Land Registry where they are currently locked up in a safe due to the ongoing case.
3. The application is premised on the affidavit of the defendant sworn on 8<sup>th</sup> May 2025 and also on the further affidavit of the defendant filed on the 4<sup>th</sup> July 2025.
4. The application is opposed by the plaintiff. The plaintiff filed an affidavit dated 27<sup>th</sup> May 2025 in which he averred as follows:
  - a. That the application is an afterthought to fill in lacuna of evidence that arose during the cross-examination of the defendant and is tantamount to litigation in piecemeal;
  - b. Litigation has to come to an end and it is 10 years now since the plaintiff instituted the suit and the delay in prosecuting the same has been occasioned by the defendant who has employed all manner of tactics over time to avoid testifying up to until reason to while he was living on the suit premises despite the plaintiff having closed his case in 2018;
  - c. That there has never been any confusion as the defendant has all along introduced himself to the plaintiff as Shariff Omar Muhammad and the defendant has always known about the instant suit;
  - d. That the defendant has had or opportunity to file his documents before the matter proceeded to hearing but he did not do so;
  - e. That in both instances when the matter proceeded for hearing of the plaintiff's and defence case, the defendant did not at any point indicate to the court that there would be any further documents he intended to rely on;
  - f. That the appointment of a new advocate is irrelevant to the issues at hand as the applicant has always been represented by an advocate;
  - g. That the documents mentioned could have been easily obtained if the defendant knew of their existence and if he had exercised all due and reasonable diligence;

- h. That no difficulty in obtaining the documents has been demonstrated;
  - i. The relocation of residences could not have affected the defence case if the applicant knew that the documents existed and they should have been obtained easily before the hearing of the defense case;
  - j. That for a title that was issued in 2016 and 2017, it cannot be said that the relevant files were archived as alleged by the defendant;
  - k. That the new documents cannot be deemed as discovery of new evidence that could not be obtained as upon the exercise of reasonable diligence as the defendant has deponed to being aware of the existence they are of;
  - l. That no evidence of misfiling at the land registry has been presented;
  - m. That any production of additional evidence by the defendant will be prejudicial to the plaintiff's case and occasion a mistrial and a miscarriage of justice and embarrass the process of the court.
5. In the further affidavit of the defendant, he stated that due to passage of time and movement of residence in his place to the allotment documents and receipts were misplaced though he retained the original title deed issued in 2017. That his new counsel discovered that the relevant records were scattered across three different registries in Nairobi and Mombasa. The documents respond to the plaintiff claim that no allotment survey or did planet exists and that no such can be traced. That it was the plaintiff's former counsel who had informed the court that the documents could not be traced yet now the plaintiff is objecting to the production of the same documents. He denied that he wants to fill in gaps in his evidence an added that the documents proposed to be produced a critical to the just determination of the dispute.
6. The court ordered that the application be disposed of by way of written submissions which both parties filed. I have considered the application the responses and the submissions.


## **ANALYSIS AND DETERMINATION**

7. The only issue arising for determination is whether the plaintiffs should be allowed to adduce more evidence as prayed in the application.
8. The defendant's case was marked as closed on 28<sup>th</sup> April 2025. On that day the court ordered site visit. On the same day the court also allowed 30 days for court annexed mediation. Site visit was conducted on 16<sup>th</sup> May 2025 and a report dated 22<sup>nd</sup> May 2025 was filed by the Deputy Registrar of this court, she having visited the suit land the same day. The present application was filed on 8/5/2025. The question that arises is whether the orders sought by the applicant are deserved.
9. The present suit was filed in the year 2015. The plaintiff testified on 14<sup>th</sup> March 2017 and closed his case on 30<sup>th</sup> October 2017. The defendant's counsel was always present during those sessions.
10. Hearing of the defendant's case began on 8<sup>th</sup> February 2023 when DW1 testified. The defendant testified on 28<sup>th</sup> April 2025. On the same day his case was closed. As at the time of closure of the defendant's case, there was no indication that any documents were required or intended to be looked for or filed as additional evidence in this case as at the time of closing the defense case.
11. Vide submissions filed on 19/10/23, it was the defendant who lamented the delay in the finalization of the present matter thus:

"8 years down the line. The plaintiff is still amending the plaint despite this court having heard the plaintiff and defendant's cases thereby violating the principle of closure of cases and the concept that there must be an end to litigation."
12. This court has wide discretion to allow an application for additional evidence, or even to recall any party or any witness to give evidence or for further examination. However, it finds that in the circumstances of this case which is very old and in which the plaintiff closed his case **8 years** ago on 30/10/2027, granting the present application would throw him back to reopening of his case which can not be a pleasant joke. It would occasion him considerable prejudice in terms of delay.

13. It cannot be said that the defendant never knew what he needed to prove his case. His lethargy at getting his evidence was apparently informed by the idea that litigation is a game in which one can hide behind the technicality that his description by name has been wrongly given.
14. I agree with the plaintiff that if the defendant has now gotten some documents, the relevance to the present litigation of which this court can not presently tell, those documents had been always there and were capable of, with the application of due diligence, being obtained. In any event the claims by the defendant lack any harmony: a title was issued to him in 2017 while litigation over the titled land had already commenced in 2015, and the supporting documents were not available for him to include in his court filings until 2025. Unfortunately for him, in view of the fact that it appears to this court that he had the opportunity of availing those documents long ago but he never did so, it is now too late to even contemplate availing them.
15. In addition, the defendant can not validly claim that he was not given time to look for those documents he now claims to have obtained. He ought to have obtained them while the plaintiff was struggling with the issue of whether he has sued the defendant by his rightful name, something which with the cooperation of the defendant, who knew that he was the intended defendant, could have been resolved in a day by a consent. It is on occasions like these that the court is duty bound to strictly uphold the principle *interest reipublicae ut sit litium finis*.
16. The application dated 8/5/2025 is therefore dismissed with costs.
17. The parties shall file their written final submissions, the plaintiff **within 21 days** and the defendant **within 21 days** of service by the plaintiff and this matter shall be mentioned on **28<sup>th</sup> January 2026** for issuance of a judgment date.

**Dated, signed and delivered at Malindi on this 25<sup>th</sup> day of November, 2025.**

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi Njoroge".

**MWANGI NJOROGE  
JUDGE, ELC, MALINDI.**