



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

COUNTY COURT NAME: MIGORI HIGH COURT

CASE NUMBER: HCCSCA/E001/2025

SORI LAKESIDE HOSPITAL VS VANGUARD LIMITED

JUDGMENT

The Appellant was aggrieved by the decision of the Adjudicator dated 2nd May 2025 in Migori Small Claims Court Case No. E005 of 2025 where the Adjudicator allowed application dated 27th March 2025 which sought that the court reviews and/ or sets aside its judgement and the Claimant be granted leave to file the bundle of documents contained in its list dated 2nd December 2024 and serve the same out of time and the matter be heard on merit.

It is common practice that courts have discretion to reopen cases but while the principle of a fair trial is a Constitutional right under Article 50 of the Constitution, this discretion must be exercised judiciously and in a manner that upholds the integrity of the judicial process.

Courts have held that for a case to be reopened, the applicant must show that there has been new evidence which could not be obtained earlier and that the evidence is crucial to the case's determination. It is also imperative that reopening would not be prejudicial to any party; that reopening is not intended to fill evidential gaps; and the application has not been made inordinately late as held in the case of Susan Wavinya Mutavi v Isaac Njoroge & another [2020] eKLR as held by Eboso J. The rule of thumb is that the court must be satisfied that re-opening the case is necessary to ensure that justice is done.

The claim in the Small Claims Court was filed on 26th January 2025 and judgement delivered on 20th March 2025. This was 6 days shy of the 60 days statutory period provided for in the Act. The application dated 27th March 2025 was filed pursuant to the provisions of Section 41 of the Small Claims Court Act and the Trial Magistrate guided by the said provisions and case law exercised her discretion to allow the application considering that the list of documents intended to be produced was already filed and it was due to inadvertence on the part of counsel that they were not uploaded in the CTS. The Adjudicator extensively discussed the reasons why she exercised the discretion to re-open the Respondent's case. It was to meet the ends of justice for a litigant who inadvertently failed to upload documentary exhibits which list was already uploaded and identified and even said to have been produced under the belief that they were in court. This court finds that allowing the Respondent to reopen its case will not prejudice the Appellant as it will have an opportunity to



interrogate the documents through cross examination of the witnesses.
The appeal herein lacks merit and the same is dismissed with no orders as to cost.
DATED, SIGNED AND DELIVERED AT MIGORI THIS 20TH DAY OF NOVEMBER, 2025.

SIGNED BY/FOR:
HON. LADY JUSTICE ANNE ONG'INJO



THE JUDICIARY OF KENYA.
MIGORI HIGH COURT
HIGH COURT DIV
DATE: 2025-11-20 14:39:07

