



Muhoroni Sugar Company Limited v Wanjira (Suing as an administrator & personal representative of the Estate of Maurice Agwati Wanjira (Deceased) & another (Civil Appeal E155 of 2023) [2025] KEHC 18011 (KLR) (1 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E155 OF 2023
G MUTAI, J
DECEMBER 1, 2025**

BETWEEN

MUHORONI SUGAR COMPANY LIMITED APPELLANT

AND

**SOLOMON AGWATI WANJIRA (SUING AS AN ADMINISTRATOR &
PERSONAL REPRESENTATIVE OF THE ESTATE OF MAURICE AGWATI
WANJIRA (DECEASED) 1ST RESPONDENT**

PRIDE ENTERPRISES LIMITED 2ND RESPONDENT

RULING

1. The Court below delivered a judgment on 21st June 2023, vide which it found for the respondent and against the appellant. Being aggrieved, the appellant filed the instant appeal.
2. The appellant filed a record of appeal on 3rd May 2024. The appeal was admitted on 13th May 2025. The Court gave directions that the appeal would be canvassed by way of written submissions, which were to be highlighted on 3rd July 2025.
3. On 27th June 2025, the 1st respondent's counsel filed a supplementary record of appeal, vide which the grant of letters of administration issued on 21st November 2002 and the certificate of confirmation of grant issued on 15th April 2004 were introduced. This is what led to the filing of the application before the Court. The supplementary record of appeal was filed together with the written submissions of the 1st respondent after the appellant/respondent had filed its submissions.
4. The application of the appellant is dated 2nd July 2025. It seeks to have the supplementary record of appeal dated 27th June 2025 struck out or expunged from the court record, and for the new evidence introduced by the 1st respondent through the said supplementary record of appeal to be disallowed.



5. The appellant/respondent contended that the supplementary record of appeal that was filed on 27th June 2025 contained new evidence not produced at the trial Court and was filed contrary to Order 42 Rule 27 of the Civil Procedure Rules on adduction of new evidence at the appellate stage. The new evidence was prejudicial to the appellant, undermined due process, and it would be in the interest of justice to expunge or strike out the said supplementary record of appeal.
6. The 1st respondent's counsel filed an application dated 16th July 2025 seeking to have additional documents admitted on the ground that there was an excusable error on the part of the 1st respondent's counsel, which wasn't objected to while the matter was proceeding in the court below.
7. On 27th July 2025, this Court ordered that the two applications would be heard together. The two applicants were canvassed together on 18th September 2025.
8. I have carefully considered the submissions of the parties, the documents filed, as well as the skeleton submissions.
9. Order 42 Rule 27 permits the adduction of evidence at the appellate stage under certain stringent conditions. It states that: -
 - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the court to which the appeal is preferred; but if—
 - (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or
 - (b) the court to which the appeal is preferred requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the court to which the appeal is preferred may allow such evidence or document to be produced, or witness to be examined.
 - (2) Wherever additional evidence is allowed to be produced by the court to which the appeal is preferred the court shall record the reason for its admission.
10. The foregoing provision is aimed at facilitating the delivery of justice through the adduction of evidence at the appellate stage, where, in so doing, the real issue in controversy between the litigants would be considered. Where the court allows the adduction of fresh evidence, it must state its reason for doing so.
11. Before fresh evidence is introduced at the appellate stage, leave to do so must be sought. Where no leave is sought or granted, the fresh evidence must be disregarded. I agree with the holding in *Nyateko v Okech* [2023] KEELC 21392 (KLR).
12. The 1st respondent, being aware of the explicit provision of the law, seeks to address the deficiency through the application dated 16th July 2025. During his submissions, Mr Mutubia, learned counsel for the 1st Respondent, urged that allowing the application dated 16th July 2025 would be in the interest of justice and would dispose of the appellant's application.
13. I have considered the two applications. What is sought to be introduced is the grant and the certificate of confirmation of the grant. In my view, these documents are necessary so that the Court can adjudicate the appeal before it.
14. In the circumstances, I allow the application dated 16th July 2025 filed by the 1st respondent, as doing so would enable the Court to pronounce judgment on substantive issues in dispute, rather than on the basis of technicalities. I am not convinced that the appellant will be prejudiced in any way. Having



allowed the said application, the appellant's application is moot. The costs of the applications will be costs in the appeal.

15. In the interest of justice, I grant the appellant leave to file Supplementary submissions within 21 days of today.

16. It is so ordered.

DATED AND SIGNED AT MOMBASA, THIS 1ST DAY OF DECEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Issa, for the Appellant;

Mr Mutubia, for the 1st Respondent;

No appearance for the 2nd Respondent;

Arthur – Court Assistant.

