



**Githinji v Muhindi Mweusi Supermarket Limited (Civil Case
E003 of 2023) [2025] KEHC 18326 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18326 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL CASE E003 OF 2023
FN MUCHEMI, J
DECEMBER 4, 2025**

BETWEEN

JOYCE CAROLINE MUNJIRU GITHINJI PLAINTIFF

AND

MUHINDI MWEUSI SUPERMARKET LIMITED DEFENDANT

RULING

Brief Facts

1. The application dated 19th June 2025 seeks for orders of leave for two letters dated 23rd August 2023 appearing as serial numbers 2 and 3 on the defendant's list of documents to be taken for examination by the document examiner. It is noted that this case has already been closed in respect of both parties. Following examination, the applicant seeks that the court allows it to file a document examiner's report on the validity of the two letters.
2. In opposition to the application, the respondent filed Grounds of Opposition dated 15th July 2025.

Defendant/Applicant's Case

3. The applicant states that it filed two letters dated 23rd August 2023 in support of its case that the respondent had consented to the use of her images for advertising. The said letters were acknowledged by the respondent and signed giving her express consent for the use of her images. The matter was certified ready for hearing and the respondent did not challenge the authenticity of the signatures in the two letters. However on 29th April 2025, when the matter came up for hearing, the respondent alleged that the signatures in the said documents were forged.
4. The applicant argues that by dint of its right to a fair hearing and fair trial is entitled to a right of reply to the respondent's allegation. The applicant further argues that the two letters are the basis of the suit



and its primary defence thus it should be allowed to have the documents examined and respond to the new allegations of forgery.

5. The applicant states that it stands to suffer great prejudice if the application is not allowed.

The Plaintiff/Respondent's Case

6. The respondent states that the documents the applicant is referring to had already been produced as evidence in court during the hearing on 29/4/2025. The fact that the matter proceeded for hearing is an indication that the applicant was comfortable with the matter proceeding as it was.
7. The respondent states that the applicant failed to have the documents examined during or prior to production as provided by Order 11 of the Civil Procedure Rules. Furthermore, the applicant had ample time to subject the documents for examination upon being served with summons in the matter as the bone of contention is whether she consented to the use of her images for advertising purposes.
8. The respondent argues that it is untrue that the applicant was ambushed by her evidence during the trial when she testified that she has never signed on the defendant's exhibit now sought to be examined since in her plaint at paragraph 5 she pleaded that the adverts were placed without her consent and she reiterated the same in her witness statement.
9. The respondent states that she has already closed her case and subjecting the documents to forensic examination at this stage would heavily prejudice her case.
10. Parties put in written submissions.

The Applicant's Submissions

11. The applicant submits that its right to a fair hearing and trial as guaranteed by *the Constitution* was infringed by the plaintiff during the hearing of the suit as the plaintiff ambushed it with new allegations of fraud denying it a right of reply. The applicant submits that it is entitled to reply to the allegations by the plaintiff

by adducing evidence to the required standard being evidence of a handwriting expert or document examiner owing to the higher standard of proof on matters of fraud. Further, the determination on the signatures will aid the court in determining the dispute between the parties conclusively and based on expert evidence. To support its contentions, the applicant refers to the case of *Kinyanjui vs Kinyanjui & Another* (Civil Appeal E201 of 2022) [2024] KEHC 11217 (KLR) (23 September 2024) (Judgment).

The Respondent's Submissions.

12. The respondent submits that the instant application is an afterthought aimed at a fishing expedition. The respondent further submits that she has already closed her case and she will be greatly prejudiced as she will not have an opportunity to challenge any new evidence that might be introduced at the current stage.

The Law

Whether the application is merited

13. 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.



14. In the case of Samuel Kiti Lewa vs Housing Finance Co. of Kenya & Another (2015) eKLR, Kasango J expressed herself as follows:-

The court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion, the court should ensure that such re opening does not embarrass or prejudice the opposite party. In that regard, re-opening of a case should not be allowed where it is intended to fill gaps in evidence. Also, such prayer for re-opening of the case will be defeated by inordinate and unexplained delay.

15. Similarly in Susan Wavinya Mutavi vs Isaac Njoroge & Another [2020] eKLR, the court found that 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 determination of the case. 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.
16. In the instant case the applicant argues that the respondent ambushed them by claiming their letters dated 23rd August 2023 were a forgery and therefore they require an expert to examine the same and file a report showing that the signatures are indeed that of the respondent. On perusal of the record, the applicant produced a list of documents dated 18th June 2024 which included two letters dated 23rd August 2023 acknowledging receipt of the letter seeking her permission to use her photographs on their social media channels and a consent letter allowing the applicant to use the respondent's pictures as such. The said letters were produced by the applicant's witness during the hearing of the case as their evidence. There was no objection to the production of the said documents by the respondent during hearing. As such, the said letters are already exhibits in this case. Thus it cannot be said that the respondent ambushed the applicant in that no new evidence was introduced. The respondent did not object to the production of the document but only raised issues of forgery during cross examination which is allowed during cross-examination. It is important to note that the said documents were filed on 18th June 2024 together with the entire evidence of the defendant/applicant. It follows that no new evidence that has been found that could not be obtained during the filing of the case.
17. It is not in doubt that the applicant was always aware that the subject matter of the case revolved around the lack of consent on its part to use the respondent's images to promote its business. Thus, the applicant had ample time to subject the documents for examination before filing them or at least during the taking of directions. Furthermore, the applicant was always aware that any evidence produced could be challenged in cross-examination.
18. In my considered view, the re-opening of the case will be prejudicial to the respondent who closed her case bearing in mind that the applicant has, closed their case. The documents in issue have been admitted in evidence. At the appropriate time, the court will examine the said documents before making determination herein.
19. I find no merit in the application dated 19th June 2025 and it is accordingly dismissed.
20. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 4TH DECEMBER 2025.

F. MUCHEMI
JUDGE

