



**Gikonyo & Sons Company Ltd v Mbaru (Sued as the legal representative of the Late Stephen Mbaru Gitara t/a San Stevens Electrical Sales and Services) (Environment and Land Appeal E202 of 2024) [2025] KEELC 8648 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8648 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E202 OF 2024  
JG KEMEI, J  
DECEMBER 11, 2025**

**BETWEEN**

**GIKONYO & SONS COMPANY LTD ..... APPELLANT**

**AND**

**SUSAN WANGARI MBARU (SUED AS THE LEGAL REPRESENTATIVE OF THE LATE STEPHEN MBARU GITARA T/A SAN STEVENS ELECTRICAL SALES AND SERVICES) ..... RESPONDENT**

**RULING**

1. What is coming up for determination is the Appellant’s application dated 13/3/2025. The application is expressed to be brought under the provisions of Sections 1A, 1B, 3A and 78 of the *Civil Procedure Act*, Order 42 Rule 27 (1) and (2) and Order 51 Rule 6 of the Civil Procedure Rules. The Appellant prays for orders that;
  - a. Leave be granted to the Appellant/Applicant to adduce further evidence taking the form of documents appearing at pages 3-15 of the memorandum of appeal being the pleadings, documents and proceedings in Nairobi SCC No. E601 of 2022.
  - b. The costs of this application be provided for.
2. The application is based on the grounds on its face and further supported by the Affidavit of Samuel Gicimu Gikonyo, the Appellant’s Director, sworn on the same date. The deponent states that the Appellant filed a suit in the Small Claims Court for rent arrears amounting to Kshs. 855,000/= for premises leased to the Deceased, Stephen Mbaru Gitara t/a San Stevens Electrical Sales and Services. He states that the Respondent defended the suit by filing a Defence and supporting documents. These documents and the Defence showed that the Defendant had passed away and that she had been appointed as the legal representative of his estate.



3. He asserts that the court, on its own motion, held that it lacked jurisdiction to hear the claim because the Environment and Land Court is the only court authorised to hear and decide such disputes. Following this order, the Appellant filed a new suit in the Magistrate's Court. The Respondent was sued as the legal representative of the deceased.
4. He contends that, to his surprise, the Lower Court dismissed his suit because he had not produced the grant in Court. It is the said grant that he wishes to produce here as additional evidence.
5. On 22/9/2025, the court ordered the parties to file and exchange written submissions within 14 days. The Appellant/Applicant was further instructed to serve the Respondent and to file an Affidavit of Service. The matter was scheduled for mention on 7/10/2025 to confirm compliance and issue further directions.
6. By 7/10/2025, counsel for the Appellant only confirmed they had filed submissions and requested a date for the Ruling. He did not confirm whether they had served the Respondent.
7. I have reviewed the record. There is no affidavit of service filed to confirm that the Respondent was indeed served. Without proper service, the Respondent risks being condemned unheard, which conflicts with the principles of natural justice and the constitutional right to a fair trial under Article 50 of *the Constitution*. Proceeding without confirming whether the Respondent is aware of the proceedings against her would amount to a mistrial.
8. In the circumstances, the Appellant/Applicant's application is hereby struck out with no orders as to costs.
9. It is so ordered

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered online in the presence of;

Mr Gacheru for the Appellant

N/A for the Respondent

C/A - Ms Yvette Njoroge

