

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC APPEAL NO. E117 OF 2024

SIRIAKA MWONJIRU KINYUA.....1ST APPELLANT
GEORGE MWIHIA MARY.....2ND APPELLANT
GRACE WANJIRU KIBE.....3RD APPELLANT

VERSUS

GEORGE MUCHIRI KAMAU.....RESPONDENT

RULING

1. This ruling determines the Appellants' Notice of Motion dated 6th March 2025 in which the Appellants seek to be granted leave to adduce additional evidence in the form of a valuation report on the value of the suit property herein. The Appellants further seek that the court be pleased to order the Government valuer, Kiambu through Ruiru Lands Registry to conduct a valuation in respect of the suit properties RUIRU/MUGUTHA BLOCK 1 T.1055, 105556 and 10557 being sub-divisions of land parcel number RUIRU/MUGUTHA BLOCK 1 T.599.
2. The application is premised on the grounds on the face of the Notice of Motion which are amplified in the joint affidavit sworn by the Appellants on 6th March 2025.

3. The gist of the application is that Hon. C.K Kisiangani, Principal Magistrate who presided over the suit in the Magistrate's Court being **MCELC No. E066 of 2022** did not have jurisdiction to hear and determine the suit as the suit properties were valued at Kshs. 29,100,000 which exceeded the monetary jurisdiction of the trial magistrate which was Kshs. 10,000,000.
4. The application is opposed by the Respondent vide his Replying affidavit sworn on 22nd April 2025 in which he avers that the application is an afterthought and an attempt to re-litigate issues that were already determined by the court.
5. He adds that the question of jurisdiction was never raised during the proceedings in the lower court and he Appellants fully participated in the trial without any objection to the court's jurisdiction. It is his contention that in their Defence date 16.5.23, the Appellants admitted the court's jurisdiction.
6. The Respondent avers that the valuation report that is sought to be adduced could have been obtained during the trial and no explanation has been offered as to why it was not produced during the trial.
7. He is of the view that the Appellants attempt to introduce additional evidence seeks to introduce a fresh case contrary to the tenets of the law. He depones that the purpose of an appeal is to determine whether the trial court arrived at a proper decision

based on the evidence before it and allowing the introduction of new evidence would prejudice the Respondent and undermine the integrity of the judicial process.

8. He concludes that the trial magistrate arrived a proper decision based on the evidence adduced by the parties and prays that the application be dismissed with costs.
9. Pursuant to the court's directions the parties filed their respective submissions which I have considered.
10. In her submissions learned counsel for the Appellants submitted that the court's jurisdiction flows from the Constitution or statute or both and a court cannot arrogate itself jurisdiction that is not conferred by the law. She relied the case of **Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others**. She further submitted that jurisdiction is everything as it goes to the heart of the dispute. Reliance was placed on the case of **The Owners of Motor Vessel Lilian "S" v Caltex Kenya Limited**.
11. It was her contention that the question of jurisdiction can be raised any time including on appeal. She urged the court to allow the application.
12. On the other hand ,learned counsel for the Respondent relied on the case of **Mahamud v Mohamad & 3 Others (Petition 7 & 9 of 2018) (Consolidated) [2018] KESC 62 KLR** where the

Supreme Court laid down the principles for admitting additional evidence on appeal and submitted that the Appellants' application did not meet the threshold for admitting additional evidence.

ANALYSIS AND DETERMINATION

13. Having carefully considered the application, Replying Affidavit and rival submissions, the singular issue for determination is whether the Appellants should be allowed to adduce additional evidence on appeal.

14. Section 78 (1) of the Civil Procedure Act provides as follows:

“(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require the evidence to be taken.”

15. Order 42 Rule 27 of the Civil Procedure Rules sets the parameters for production of additional evidence on appeal as follows:

“(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 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 witnesses to be examined.*

(2) Where 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”

16. Even though an appellate court has the discretion to take additional evidence, the same must be exercised judicially within set principles. The power to admit additional evidence should be exercised sparingly and with great caution.

17. In the case of **Mahamud v Mohamad & 3 Others (Petition 7 & 9 of 2018) (Consolidated) [2018] KESC 62 KLR** the Supreme Court laid down the principles governing the exercise of the court’s discretion to allow additional evidence on appeal as follows:

i. *‘The additional evidence must be directly relevant to the matter before the court and be in the interest of justice;*

- ii. *It must be such that, if given, it would influence or impact upon the result of the verdict although it need not be decisive;*
- iii. *It is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;*
- iv. *Where the additional evidence sought to be adduced removes any doubt over the case and has a direct bearing on th main issue in the suit;*
- v. *The evidence must be credible in the sense that it is capable of belief;*
- vi. *The additional evidence must not be so voluminous making it difficult or impossible for the other party to respond;*
- vii. *Whether a party would reasonably have been aware and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;*
- viii. *Where the additional evidence discloses a strong prima facie case of willful deception of the court;*
- ix. *The court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling*

*gaps in evidence. The court must find the further evidence
needful;*

*x. A party who has been unsuccessful at the trial must not seek
to adduce additional evidence to make a fresh case in
appeal, fill up omissions or patch up weak points in his/her
case;*

*xi. The court will consider the proportionality and prejudice of
allowing the additional evidence. This requires the court to
assess the balance between the significance of the
additional evidence on the one hand, and the need for swift
conduct of litigation together with any prejudice that might
arise from the additional evidence on the other’.*

18. In the instant case, the question of the court’s discretion did not arise during the trial. From the Appellant’s Defence dated 6th June 2023, they admitted the court’s jurisdiction. In their supporting affidavit, the appellants have not demonstrated that they could not have obtained the valuation report now sought to be introduced after the exercise of due diligence. I am of the view that the said report could have been obtained in order to show the value of the suit properties.

19. In the case of **Ringi v Seif & Another Civil Appeal No. 44 of 2016 (2019) eKLR**, the court held that additional evidence that

comes into existence subsequent to the impugned judgment and order cannot be admitted.

20. Furthermore, as pointed out by the Respondent the issue of the value of the suit property does not remove any vagueness or doubt on the issues in the appeal, if anything it seeks to introduce a fresh case by challenging the trial court's jurisdiction.
21. For the foregoing reasons, I am not persuaded that the threshold for adducing new evidence has been met. Consequently, I decline to allow the appellants to adduce additional evidence and proceed to dismiss the application.
22. Costs shall abide the outcome of the Appeal.

Dated, signed and delivered virtually this 21st day of January, 2026.

J.M ONYANGO

JUDGE

In the presence of :

1. Ms. Waithera Mwangi for the Appellant/Applicant
2. Mr. Kimani for the Respondent

Court Assistant : Hinga

ORIGINAL