



REPUBLIC OF KENYA



**KENYA LAW**  
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**Katsikali & another v Charo & 14 others (Environment and Land Appeal  
E002 of 2026) [2026] KEELC 246 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 246 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E002 OF 2026  
FM NJOROGE, J  
JANUARY 27, 2026**

**BETWEEN**

**SAMUEL KIVUMBU KATSIKALI ..... 1<sup>ST</sup> PLAINTIFF**

**JOMO KATSIKALI KIVUMBU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DOUGHLAS CHARO & 14 OTHERS & 14 OTHERS ..... DEFENDANT**

**RULING**

1. The Notice of Motion dated 6<sup>th</sup> January, 2026 is seeking the following orders:
  - a. That there be a stay of proceedings on the directions and or orders issued on 5<sup>th</sup> December ,2025 by Hon. M. Kimani in the Principal Magistrate’s Court at Mariakani in ELC Case Number E011 of 2025 pending the hearing and determination of the appeal;
  - b. There be a stay of delivery of the ruling scheduled for the 21<sup>st</sup> January, 2026 in Hon. M. Kimani in the Principal Magistrate’s Court at Mariakani in ELC Case Number E011 of 2025 pending the hearing and determination of the appeal;
  - c. That the court be pleased to issue an order expunging the respondents’ further affidavits sworn on 10<sup>th</sup> September, 2025 from the record of the subordinate courts’ proceedings for having been filed after submissions and without leave.
2. The application is premised on the following grounds, namely, that the matter came up before the trial Magistrate on 5<sup>th</sup> December 2025 when parties were to confirm that they had filed their written submissions in respect of an application dated 23<sup>rd</sup> July, 2025. On that date, the appellant’s advocate pointed out to the trial Court that the respondents filed a further affidavit sworn on 10<sup>th</sup> September, 2025, supposedly in response to the appellant’s supplementary affidavit sworn on 1<sup>st</sup> September, 2025 after parties had already filed their written submissions; that at that stage where evidence had closed



and no party was permitted to come up with any new affidavit evidence without leave of Court. The appellant's advocate challenged that affidavit as irregular and the evidence therein as inadmissible and sought to have it expunged from the record by the trial Magistrate, but he declined the request and ordered the appellants to respond to the same within 7 days, hence the present appeal against that decision.

3. The appellant challenges the Magistrate's decision to admit that affidavit on the basis that it was in violation of Article 50(1) of *the Constitution* on the right to fair hearing, and that it raises serious issues on the law on the admissibility of evidence after submissions besides touching on the exercise of judicial discretion.
4. The application is opposed. Douglas Karisa Charo, the 1<sup>st</sup> respondent filed his sworn affidavit dated 9<sup>th</sup> January, 2026 with the authority of the rest of the respondents, in opposition thereto. His response is that as at the time of filing and service of the said affidavit, no party had filed their respective written submissions on the application before the Learned Trial Magistrate; that after the affidavit impugned by the appellant was filed and served on 10<sup>th</sup> September, 2025, the appellant's submissions were filed on 16<sup>th</sup> September 2025, while the respondent's submissions were filed on 23<sup>rd</sup> September 2025. Further it is deponed that on 5<sup>th</sup> December 2025 when the appellant's counsel argued that she was entitled to the right to respond to the impugned affidavit, the trial Magistrate granted counsel leave to respond to it; that the change of mind leading to the current insistence on the expunging of the impugned affidavit came later after these events; that the court's primary objective is to administer justice fairly and ensure just, expeditious, proportionate and affordable resolution of disputes and it will always exercise its discretion based on the specific circumstances of each case.
5. The application was argued orally on 19/1/26 before me when Mr. Laikuru and Ms. Amugune made representations for their respective clients. It is noteworthy that there was no supplementary affidavit in answer to Douglas Karisa Charo's affidavit dated 9<sup>th</sup> January 2026, and it is thus this court's opinion that the contents thereof are not controverted.
6. Also, it is noteworthy that Prayer no. 6 in the present motion can not be granted even after inter partes hearing as it would dispose of the present appeal at an interlocutory stage.
7. The first issue that this court ought to determine on a preliminary basis is whether there is a proper appeal in place upon which the application may be grounded. The Memorandum of Appeal was filed on 5/1/2026. I have examined the provisions of Section 75 of the CPA and Order 43 of the CPR with regard to leave of court to file an appeal, and I have also perused the court record and found that leave to appeal was granted by the Trial Magistrate, and I have found that there is a proper appeal since leave was granted.
8. Regarding the merits of the application before me, I find that there is evidence that to balance the scales of justice the Trial Magistrate granted the appellant leave to respond the affidavit sworn on 10/9/2025 before the decision on the application to which the affidavits were directed was issued; that the impugned affidavit had already been filed by the date the matter came up before the trial magistrate for a mention before a ruling date was issued, and the securing of such an order to admit the same, was demonstrative of the respondent's desire to minimize on the period that would have otherwise been used to secure by way of a formal application the leave of court to file such a document.
9. In my view it is the exercise of discretion to admit the impugned affidavit that is at trial. The provisions of section 1A, 1B of the *Civil Procedure Act* provide as follows:

1A. Objective of Act



- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B. Duty of Court

For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—

- (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient use of the available judicial and administrative resources;
- (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
- (e) the use of suitable technology.

10. It would appear that the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act is the main emphasis of Sections 1A and 1B of the CPA.
11. I would presume that in the interregnum between the filing of the first affidavit of the present respondent in the lower court and the date of filing of the impugned affidavit matters may have come to his attention that may have necessitated the filing of a further affidavit.
12. There is no express provision in the Civil Procedure Rules that the filing of a further affidavit in an application is prohibited. Parties routinely apply orally during mentions for leave to file further or supplementary affidavits and such leave is usually granted depending.
13. In view of the requirement of Section 1A that the primary objective of the Act and the Rules is to facilitate the just disposal of the disputes before court, the exclusion of the respondent's affidavit would have in all probability resulted in thoughts of discontentment or in the respondent's mind on the basis that the court would determine the application without being seized of some relevant facts in the impugned affidavit, yet under Article 50 of *the Constitution*, every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, and also that Article 159(2)(d) promotes substantive justice above technicalities.
14. In this court's consideration, the most relevant issue at hand is the possibility that the trial magistrate in admitting the impugned affidavit may have considered that the exclusion would go contrary to Article 50 and 159(2)(d) and that but also, in observance of the same Articles, favoured the appellant herein with leave to respond.
15. It is this court's opinion that in the circumstances, all the appellant required to do was to file a response to the impugned affidavit to challenge the matters therein. This could have been done even while



reserving the right to appeal against the decision to admit the impugned affidavit. This court has also considered, with the provision of Section 1A (regarding expeditious disposal of disputes) in mind, that had the appellant reserved that right, only the trial court's final substantive decision on the application should have finally precipitated an appeal, with some of the grounds being the very grounds that has been raised in this appeal.

16. In that regard the application before the trial court would have been disposed of expeditiously and the likelihood of multiple appeals in respect of one motion would have been avoided. This would have satisfied the requirements of justice and expedition, not to mention proportionality and affordability in Section 1A of the *Civil Procedure Act*.
17. As things stand now, it is not even possible to know how much weight would have been placed by the trial magistrate on the contents of the application, and that makes the present application and appeal quite speculative.
18. For the aforesaid reasons, this court finds that the application dated 6/1/2026 lacks merit and it is hereby dismissed with costs to the respondent. For the avoidance of doubt, the orders granted by this court on 19/1/2026 are hereby vacated.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 27<sup>TH</sup> DAY OF JANUARY 2026.**

**MWANGI NJOROGE,  
JUDGE, ELC, MALINDI.**

