



Musau v Mbole (Suing in Her Capacity as the Personal Representative of Danson Paul Mbole) & another (Environment and Land Case 480 of 2017) [2026] KEELC 288 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 288 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE 480 OF 2017**

NA MATHEKA, J

JANUARY 27, 2026

BETWEEN

CHRISTOPHER MUSYOKA MUSAU PLAINTIFF

AND

**BENEDICTA NDUNGE MBOLE (SUING IN HER CAPACITY AS THE
PERSONAL REPRESENTATIVE OF DANSON PAUL MBOLE) 1ST DEFENDANT**

KASHMIR SINGH 2ND DEFENDANT

RULING

1. The application is dated 30th July 2025 and is brought under Article 50 of *the Constitution* of Kenya 2010; Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya; Order 51 of the Civil Procedure Rules seeking the following orders;
 1. That this Honourable Court be pleased to grant leave to the Plaintiff/Applicant herein to re-open his case, file a supplementary list of documents, supplementary list of witnesses and a further witness statement.
 2. That costs of this application be provided for.
2. It is based on the grounds that the Court, in an order given on 25th February, 2025 allowed the Defendants/Respondents herein leave to file supplementary lists of witnesses, documents and witness statements out of time and after the Plaintiff had already testified and closed his case. The Applicant is obliged under the provisions of the *Civil Procedure Act* (Cap 21) Laws of Kenya to make a full frank disclosure and to assist the court in arriving at a just determination of the issues in dispute. The Applicant herein has since obtained crucial testimony of probative value from a credible witness as to the validity of the sale agreement dated 14th May, 1985; which agreement forms part of the core substantive issues for determination in the suit herein and desires that the same is brought within the



purview of the court for determination. Considering this Honourable Court granted the Respondents herein leave to file additional documents and witness statements after close of the Plaintiff's case as aforesaid, no prejudice will be suffered by the Respondents if the instant application is allowed. That the Defendants/Respondents are yet to testify or adduce evidence. As such, no prejudice can be suffered by themselves if the instant application is allowed.

3. This court has considered the application and the submissions therein. This court has perused the court record. By an application dated 17th October 2024 the Applicant/Defendant sought leave of this Court to admit additional evidence in the form of a forensic report on the signatures of the sale agreement dated 14th May 1985 between Danson Paul Mbole and Christopher Musau (Attached is a supplementary list of documents and a copy of the Forensic report. That the additional evidence is crucial as the same is an expert testimony which fundamentally challenges the assertion of the authenticity of the sale agreement in question and supports her claim of individual ownership.

4. The court noted and found as follows;

that the documents the defendant wishes to file as additional evidence and do appreciate that there may be need for the defendants to cross examine the plaintiff on those documents. In my view, the court should allow a party to prosecute his/her case to the party's satisfaction. This includes the calling of witnesses and production of documents a party deems necessary in proving or aiding their case. From the above authorities and the circumstances of this case I find that the production of the documents by the defendant will not prejudice the plaintiff's case. Allowing the application will go a long way in serving substantive justice for the parties. I consequently find that the application dated 17th October, 2024 is merited and the same is hereby allowed. Costs shall follow the outcome of the main suit."

5. The Plaintiff/Applicant in this application states that he has since obtained crucial testimony of probative value from a credible witness as to the validity of the sale agreement dated 14th May, 1985; which agreement forms part of the core substantive issues for determination in the suit herein and desires that the same is brought within the purview of the court for determination. I concur with the Applicants submissions that considering this Court granted the Respondents herein leave to file additional documents and witness statements after close of the Plaintiff's case, no prejudice will be suffered by the Respondents if the instant application is allowed. I wish to reiterate that even if the Plaintiff's case is closed, the court can still open it up and have a particular witness re-called for further examination in chief or cross-examination or re-examination as provided by Section 146 of the [Evidence Act](#). Section 146(4) of the [Evidence Act](#) states;

The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively."

6. In the case of *Mzee Wanje & 93 Others vs A.K. Saikwa & Others* (1982-88) KAR, 462, Chesoni Ag JA (as he then was) observed as follows;

The principles upon which an appellate court in Kenya in a civil case will exercise its discretion in deciding whether or not to receive further evidence are the same as those laid down by Lord Denning LJ, as he then was, in the case of *Ladd vs. Marshall* [1954] 1 WLR 1489 at 1491 and those principles are:

- (a) It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;



- (b) The evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive;
- (c) The evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.”

7. I find that the Defendants/Respondents are yet to testify or adduce evidence. I see that no prejudice can be suffered by Respondents if the instant application is allowed. I find that this application is merited and I grant it as prayed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY OF JANUARY 2026.

N.A. MATHEKA

JUDGE

