



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oyunge v Nyansimora (Civil Suit E088 of 2022)  
[2026] KEHC 851 (KLR) (Family) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 851 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL SUIT E088 OF 2022  
CJ KENDAGOR, J  
FEBRUARY 2, 2026**

**BETWEEN**

**IRENE KWAMBOKA OYUNGE ..... PLAINTIFF**

**AND**

**JACOB ONCHIRI NYANSIMORA ..... DEFENDANT**

**RULING**

1. The Plaintiff filed the Originating Summons dated 16<sup>th</sup> December, 2022 seeking division of Matrimonial Property. The matter was heard, both parties testified before this Court, and it was reserved for judgment on 7<sup>th</sup> April, 2025.
2. However, before the judgment could be delivered, the Plaintiff filed an application dated 22<sup>nd</sup> January, 2025 seeking to arrest the Judgment and leave to adduce more evidence.
3. The application was allowed in the following terms;
  - a. The Applicant (Plaintiff) is allowed to file only the Bank statement from Co-operative Bank dated 15/01/2025 and letter from the National Bank dated 14/01/2025.
  - b. The Plaintiff's case is to be re-opened only for purposes of having PW1 produce the 2 documents stated in (a) above.
  - c. The Defendant is given corresponding leave to file any further documents in relation to the two documents stated in (a) above, if need be.
  - d. The Applicant to pay the Respondent Kshs 30,000/- being throwaway costs before the next hearing date, failure to which the order lapses.



4. The Plaintiff filed the supplementary list of documents dated 16<sup>th</sup> June, 2025. On the date the matter was fixed for directions, the Plaintiff sought directions that the Court adopt the documents and proceed to make a determination, while the Defendant sought directions that the makers of the documents attend Court and that we proceed viva voce.
5. Thereafter, the plaintiff filed an application dated 15<sup>th</sup> August 2025 that seeks the following orders;
  - a. That the plaintiff be granted leave to produce the certified bank statement from Cooperative Bank dated 15/01/2025 and the letter from the National Bank dated 14/01/2025 without calling the makers of the documents.
  - b. That the Defendant be at liberty to cross-examine the plaintiff and submit on the probative value of the certified bank statement from Cooperative Bank and the Letter from National Bank;
  - c. That in the alternative, the Parties to submit on the probative value of the Bank statement and Letter and the Court proceeds to deliver its judgment.
6. The Defendant also filed an application dated 6<sup>th</sup> October, 2025 that seeks the following orders;
  - a. Spent
  - b. That this Honourable Court be pleased to make a declaration that the Bank Statements as listed by the Plaintiff's supplementary list of documents are inadmissible;
  - c. That the said bank statements be expunged from the Plaintiff's record of evidence and not relied upon in the proceedings;
  - d. That costs be borne by the Plaintiff.
7. The two applications will be considered together. I have considered the pleadings filed in relation to the two applications and the issues for determination are as follows:
  - a. Whether the additional documents should be expunged, or
  - b. Whether the additional documents should be admitted without calling their makers.
8. The Court, in reopening the case, emphasized the importance of determining the real issues in controversy and ensuring that substantive justice is served for all parties involved. The Plaintiff was given the opportunity to produce additional evidence; however, it is equally important that the Defendant is afforded the opportunity to challenge the newly submitted evidence. This challenge typically occurs through cross-examination.
9. Paragraph 16 of the Ruling dated 5<sup>th</sup> June, 2025 stated as follows;
  - “ 16. Nonetheless, in the interest of justice, this court is persuaded that this is a proper case where it should exercise its discretion in favour of the Applicant and allow the application. This court will make the necessary order for costs in order to cure any prejudice that may be occasioned to the Respondent. Additionally, the Respondent will have the opportunity to test the newly filed evidence during cross-examination.”
10. It follows, therefore, that the Defendant must have an opportunity to cross-examine on the documents.



11. At the delivery of the Ruling dated 5<sup>th</sup> June, 2025, the parties were afforded an opportunity to deliberate and agree on the production of the documents. This was intended at ensuring that the subsequent trial process is more efficient. They failed to seize the opportunity. This has resulted in further delay; the matter may have been heard and determined by now through a Judgment.
12. The Defendant has asked the Court to expunge the additional documents from the Plaintiff's record of evidence; however, it is important to note that these documents have not yet been produced as exhibits before the Court. The Ruling permitted the reopening of the case to allow the Plaintiff produce the specified documents.
13. The Defendant has indicated their intention to cross-examine the makers of the documents; it is evident that this intention has not been made late in the day. The Plaintiff has plainly stated that availing the Bank's representatives will be costly, but no evidence has been provided to support this assertion. Such evidence would help the Court determine whether the expenses are reasonable or not, given the circumstances of this case.
14. Therefore, I am not convinced by the Plaintiff's assertions that she meets the exceptions outlined in Section 35(1) of the *Evidence Act*.
15. Accordingly, it is the Plaintiff's responsibility to ensure that the makers are availed in Court. This will help facilitate a fair trial, considering that discretion was exercised in their favour to reopen the case after the defence hearing. The Defendant has a right to pursue a thorough examination of the additional evidence sought to be presented.
16. The admissibility of documents as exhibits is assessed during the hearing. The probative value of produced documents is ultimately evaluated as part of the final judgment in a case.
17. The upshot of the above is that the two applications are without merit and are dismissed. Costs shall be in the cause.
18. The Court shall issue directions to expedite the proceedings upon hearing the parties at the delivery of the ruling.
19. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 2<sup>ND</sup> FEBRUARY DAY OF 2026.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Achieng, Advocate holding brief for Omari, Advocate for the Defendant

No attendance for the Plaintiff

