



Omicron Holdings Limited v Attorney General & 3 others (Environment and Land Case 1191 of 2016) [2026] KEELC 615 (KLR) (11 February 2026) (Ruling)

Neutral citation: [2026] KEELC 615 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 1191 OF 2016
CA OCHIENG, J
FEBRUARY 11, 2026**

BETWEEN

OMICRON HOLDINGS LIMITED PLAINTIFF

AND

THE HONOURABLE ATTORNEY GENERAL 1ST DEFENDANT

THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT 2ND DEFENDANT

THE INSPECTOR GENERAL OF POLICE 3RD DEFENDANT

THE OFFICER COMMANDING KASARANI POLICE DIVISION 4TH DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated 15th July 2025 where it seeks the following Orders:
 - a. Spent.
 - b. That this Honourable Court be pleased to recall Joseph Njunge Mukuria, the Plaintiff's witness to produce the following new evidence that have recently come into possession of the Plaintiff.
 - i. The official search for LR No.23364 (IR No. 76643) dated 27th June 2025;
 - ii. The certificate of lease for Nairobi/Block 180/609 formerly known as LR No. 23364/36; and
 - iii. The lease document for Nairobi/Block 180/ 609, formerly known as LR No.23364/36.



- c. That this Honourable court be pleased to admit the said documents to record.
 - d. That costs be in the cause.
2. The application is premised on grounds on its face and on the supporting affidavit of Joseph Njunge Mukirae, a director of the Plaintiff. He explains that he testified before this Court on 19th February 2025 and at the time, the application for title of the suit property was being processed following subdivision but he has since received the Certificate of Lease for Nairobi/Block 180/609, formerly known as LR No. 23364/36 together with a Lease document and the official search to the parcel, documents which he considers crucial to this matter thus seeks to introduce them. He contends that the said documents will not prejudice the Defendants as they are issued by the Government of Kenya.
 3. The application is opposed by the 1st Defendant vide the replying affidavit of Daniel Mutuku. He avers that this suit was filed on 29th September, 2016 wherein at paragraph 6 of the Plaint, the Plaintiff stated that it is the registered proprietor of Land Reference No. 23364/36, comprised in Grant IR 76643/1 measuring 1.3 acres but after all due diligence at the Ministry of Lands, the Defendants could not obtain any records relating to the said parcel as the same had never been registered.
 4. He points out that at the hearing of the matter on 19th February, 2025 Mr. Joseph Njung'e Mukirae testified that the Plaintiff had the Certificate of title for Land Reference No. 23364/36 but did not have it in Court. Further, that he could avail the same when given the chance, a statement that is untrue as at the time of the said testimony, no title had ever been processed or issued in respect to the said parcel.
 5. He contends that while this suit revolves around the ownership of Land Reference No. 23364/36, no explanation has been proffered by the Plaintiff why the title documents he is seeking to introduce were not within his knowledge or possession when the suit was filed nine (9) years ago. He insists that there isn't any evidence to demonstrate the difficulties the Plaintiff faced or the due diligence it undertook to access and produce the same thus the additional evidence sought to be introduced is an attempt by the Plaintiff to have a second bite at the cherry, and is intended to fill the gaps that came out during cross examination.
 6. He states that during the pendency of the suit, the Plaintiff misled the officers at the Ministry of Lands to issue a Certificate of Lease for Land Reference No. 23364/36 without disclosing that the property was the subject of a dispute in Court, thus the documents sought to be introduced were procured fraudulently through misrepresentation and in breach of the doctrine of *lis pendens*.
 7. The application was canvassed by way of written submissions.

Submissions

8. In its submissions, the Plaintiff reiterates the averments in the affidavit in support of the application and submits that the Defendants' will suffer no prejudice as PW1 will be subjected to further cross-examination on the new documents and the manner in which they were issued and, in any case, they were issued by the Department of Lands of the Republic of Kenya whom the Attorney General is its Legal Counsel. Further, that the Court is enjoined under Article 159 (2) (d) of *the Constitution* and Section 1A and 1B of the *Civil Procedure Act* to give more consideration to substantive justice and not mere technicalities to lock out crucial evidence.
9. On her part, the Hon. Attorney General submits that whether to re-open the case and introduce new evidence is not a right to a party but is discretionary upon the Court and that discretion ought to be exercised judiciously. To this end, the case of *Patriotic Guards Limited v James Kipchirchir Sambu* [2018] eKLR was relied upon.



10. It reiterated that the additional evidence in form of a Certificate of Lease and Lease for L.R. No. 23364/36 issued on 24th June, 2025 nine (9) years after filing of the suit and three (3) months after the cross examination of the Plaintiff's director is intended to fill the gaps that came out during cross examination of the Plaintiff. Further, that the Plaintiff has not given an explanation why the documents it now seeks to introduce were not in its possession from the time the suit was filed in 2016.
11. The case of Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another [2015] KECA 911 (KLR) was relied upon to submit that by obtaining Lease during the pendency of the suit, the Plaintiff offended the doctrine of lis pendens thus it does not deserve this Court's discretion as it intends to delay the timeous determination of this matter contrary to the provisions of Article 159(2)(b) of the Constitution 2010.
12. The Attorney General further relied on several authorities including: Michael Kiplangat Cheruiyot V Joseph Kipkoech Korir [2019] eKLR, Ani & Another v Gichui & Another (Environment & Land Case 1081 Of 2016) [2022] KEELC 3233 (KLR) (28 July 2022) (Ruling), Susan Wavinya Mutavi v Isaac Njoroge & Another [2020] KEELC 8 (KLR), to support its averments.

Analysis and Determination

13. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Plaintiff's witness (PW1) should be recalled to produce additional evidence.
14. The Plaintiff has sought to recall PW1 to produce the Certificate of Lease for Nairobi/Block 180/609, formerly known as LR No.23364/36 together with a Lease document and the official search to the said parcel. The 1st Defendant has opposed the instant application arguing that this suit was filed on 29th September, 2016 wherein at paragraph 6 of the Plaint, the Plaintiff stated that it is the registered proprietor of Land Reference No. 23364/36, comprised in Grant IR 76643/1 measuring 1.3 acres.
15. Order 18 Rule 10 of the Civil Procedure Rules and section 146 of the Evidence Act gives this Court discretion to recall witnesses and allows admission of additional witnesses or documents.
16. Section 146(4) of the Evidence Act, provides that:

“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”.
17. While Order 18 rule 10 of the Civil Procedure Rules stipulates that:

“The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force; put such questions to him as the court thinks fit.”
18. In the case of Raila Odinga & 5 Others v IEBC & 3 Others, SCK Presidential Petitions Nos. 3, 4 and 5 of 2013 [2013] eKLR, the Supreme Court stated that:

“.....The other issue the Court must consider when exercising its discretion to allow a further affidavit is the nature, context and extent of the new material intended to be produced and relied upon. If it is small or limited so that the other party is able to respond to it, then the Court ought to be considerate, taking into account all aspects of the matter. However, if the new material is so substantial involving not only a further affidavit but massive additional



evidence, so as to make it difficult or impossible for the other party to respond effectively, the Court must act with abundant caution and care in the exercise of its discretion to grant leave for the filing of further affidavits and/or admission of additional evidence.”

19. Further, in *Jones Alaka Kimatu v Joseph Kimatu* [2017] KEELC 2279 (KLR); this Court, Yano (J) stated as follows while allowing introduction of further evidence:

“It is clear from the foregoing provisions of the law that the law allows the recall of a witness who has previously testified. I am not persuaded that the Defendant will suffer any prejudice if the plaintiff is recalled as he would be accorded the right to subject him to cross-examination. Moreover, if the Plaintiff is granted leave to file the supplementary list of documents, their production or otherwise will still be subject to the rules of evidence at the trial.”

20. On perusal of the Court record, I note on the 19th February, 2025, PW1 Mr. Joseph Njung’e Mukirae testified that the Plaintiff had the Certificate of title for Land Reference No. 23364/36 but did not have it in Court. Further, that he could avail the same when given the chance. I note the Plaintiff thereafter proceeded to process the certificate of Lease for the suit property during the pendency of this suit and after its witness had been cross examined. It is my considered view that the PW1’s statement on the availability of the title was hence untrue as no title had ever been processed or issued in respect to the said parcel by the time of the hearing of the Plaintiff’s case.
21. Insofar as recalling of a witness is discretionary, at this juncture I opine that by the Plaintiff seeking to produce the Certificate of Lease, which was procured after hearing of its case, it strives to cover up the gaps in its case. I opine that by the Plaintiff processing the title to the suit land during the pendency of this suit, it offends the doctrine of *lis pendens* which bars parties from transferring or dealing with immovable property that is currently subject to active litigation. Further, I note the parties had already undertaken pretrial directions in accordance with Order 11 of the Civil Procedure Rules, after which the matter had been set down for hearing.
22. In the circumstances while associating myself with the decisions quoted, I find that it will be prejudicial to the Defendants if the Plaintiff was allowed to recall PW1 and produce the Certificate of Lease to the suit property, which was procured after PW1 had testified. I opine that it will amount to stealing a match against the Defendants. Further, the Plaintiff has failed to provide plausible reasons why it had not processed the said Certificate of Lease prior to instituting this suit. To my mind the Plaintiff has not met the criteria for recalling its witness to produce additional evidence.
23. In the foregoing, I find the Notice of Motion dated the 15th July 2025 unmerited and will proceed to dismiss it with costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF FEBRUARY, 2026

CHRISTINE OCHIENG

JUDGE

In the presence of:

Koech for Plaintiff

Ndundu for Defendant

Court Assistant: Joan

