

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MARSABIT**  
**CIVIL SUIT NO. E006 OF 2025**

**SHANDE ALI**

**SHORCHA.....APPELLANT/APPLICANT**

**VERSUS**

**AHMED**

**DAWE**

**DIME.....**

**.....RESPONDENT**

**RULING**

**A. Introduction**

1. The application before this court for determination is the Notice of Motion application dated 18<sup>th</sup> November 2025 brought pursuant to provisions of ***Order 42 Rule (6) of the Civil Procedure Rules*** and all other enabling provision of law. By the said application, the Appellant/applicant seeks for orders that he be granted leave to adduce additional evidence in this appeal, namely the letter dated 9<sup>th</sup> September 2025 for consideration by this court.
2. The application is supported by a supporting affidavit sworn by the appellant dated on the same day and he deponed that, after delivery of judgment on 11<sup>th</sup> July 2025 he did received a letter dated 9<sup>th</sup> September 2025 from the Engineers board of Kenya which provided critical information on the qualifications of one Mr. William

Onyango Ogada, and it was his wish that the said evidence be admitted for consideration as part of the documents forming the record of appeal.

3. The said additional evidence was not available at the time of trial, despite exercising due diligence, but contained critical information that was relevant and material to the issues raised in the said Appeal and therefore prayed that the same be allowed in the interest of justice to enable the court effectually and completely determine the issues at hand. Also, no prejudice would be occasion upon the respondent if the said application was allowed and thus urged the court to find merit and allow the said application.
4. The Respondent did oppose this application through his replying affidavit dated 20<sup>th</sup> November 2025, where he clarified that the appellant had been charged, tried and convicted in **Moyale Criminal Case No E005 of 2021** and never preferred any appeal against the said conviction. He had thereafter filed his suit for compensation, where the said William Onyango Ogada had testified and eventually judgment was delivered against the appellant on 11<sup>th</sup> July 2025. It was clear that after the said judgment, the appellant started to shop for evidence to boost his appeal and had the said letter dated 9<sup>th</sup> September 2025, authored on the same day and received a reply generated on the same day, which was suspect.
5. Further it was wrong for the applicant to seek to adduce new evidence long after the suit had been completed and prosecuted with finality and if allow the same would be

prejudicial to the respondent and was tantamount to rigging the appellant claim. The respondent thus urged this court to dismiss the said application with costs.

**B. Determination**

6. I have carefully considered the Application before court, its supporting affidavit, the grounds of opposition filed in opposing the said application and submissions filed by the respective parties. The only issue which arise for determination is whether the applicants should be allowed to adduce new evidence.
7. Generally ***Section 78 of the civil procedure Act, order 42 rules 27, 28 and 29 of the civil procedure rules*** provide the legal basis for seeking to allow additional evidence on Appeal. The supreme court in the case of **Mohammed Abdi Mohammed Vrs Ahmed Abdulahi Mohammed & 3 others (2018) eklr** laid down the following principle's for allowing additional evidence.
  - a) ***The additional evidence must be directly relevant to the matter before the court and be in the interest of justice;***
  - b) ***It must be such that, if given, it would influence or impact upon the result of the verdict although it need not be decisive;***
  - c) ***It is shown that it could not be obtained with reasonable due 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;*
- d) *Where the additional evidence sought to be adduced removes any vagueness or doubt over and has direct bearing on the main issue in the suit;***
  - e) *The evidence must be credible in the sense that it is capable of belief;***
  - f) *The addition evidence must not be voluminous making it difficult or impossible for the other party to respond effectively;***
  - g) *Whether a party would reasonably have been aware of and procured the further evidence in the course of the trial is an essential consideration to ensure fairness and due process;***
  - h) *Where the additional evidence discloses a strong prima facie case of willful deception of the court;***
  - i) *The court must be satisfied that additional evidence is not utilized for purpose of removing lacunae and filling gaps in evidence. The court must find further evidence needful;***
  - j) *A party who has been unsuccessful at the trial must not seek to adduce additional evidence to make a fresh case in the appeal, fill up omissions or patch up the weak points in his/her case;***

***k) The court will consider the proportionality and prejudice of allowing 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 hand.”***

8. While the evidence proposed to be adduced is likely have a direct impact on the outcome of this appeal, the applicant slept on his laurels and has not proved that the said evidence could not have been obtained with reasonable due diligence for use at the trial or could not have been produced based on a valid reason. Secondly the evidence has been gathered/fished after the judgment in the primary trial had been delivered, with a clear purpose of removing lacunae and filling the gaps in evidence earlier present during trial.

### **C. Disposition**

9. The upshot is that the application dated 18<sup>th</sup> November 2025 is therefore wholly unmerited and the same is dismissed with costs.
10. It is so ordered.

Read, signed and delivered virtually at **MARSABIT** on this **17<sup>th</sup>** day of **FEBRUARY**, 2026.

**FRANCIS RAYOLA OLEL  
JUDGE**

Delivered on the virtual platform, Team this **17<sup>th</sup>** day of  
**FEBRUARY ,2026.**

**In the presence of: -**

N/A.....Appellant

N/A..... Respondent

JARSO.....Court Assistant