

gave directions on the filing of submissions. The plaintiff has filed an application dated 26.9.2025 seeking orders of stay of proceedings herein in order to re-open the plaintiff's case. The grounds in support of the application are that the plaintiffs desire to produce a newspaper cutting from the standard newspaper dated 27.9.2006. It is averred that during cross-examination of Dw3, the said witness denied that there was burning of houses and attempted evictions in year 2006 at Kambi ya Simba. The plaintiffs have learnt that the incident was actually reported in the newspaper, of which the reporting was not within their knowledge.

2. The application is opposed by the defendants through the replying affidavit of the 2nd defendant dated 7.10.2025. They argue that the newspaper cutting is neither new evidence, nor previously unavailable as the same has been in the public domain since year 2006 and could with reasonable diligence have been obtained and produced during the hearing, adding that the law discourages piecemeal litigation.

3. I have considered the rival arguments and submissions relating to the application dated 26.9.2025. The question of re-opening a case is one where courts exercise their judicial discretion on the interest of justice based on the merits of a case. When an application is made to reopen a case on the basis that new or additional evidence is available, it will be relevant, at that stage, to enquire why the evidence was not called at the hearing, See **Samuel Kiti Lewa Vs Housing Finance Co. Of Kenya Ltd [2015] eKLR.**

4. The court also has to take into account the overriding objective set out at **Section 1A (3) of the Civil Procedure Act** which provides that;

“(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”.

5. Further the provisions of **Section 1B** stipulates that;

“(1) 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.”

6. Similarly the provisions of Article 159 (2) (b) provides that; **“justice shall not be delayed”**.

7. Thus this court has a Constitutional and statutory mandate to consider the overriding objective set out in the aforementioned Act and the Constitution with a view of ensuring that there is **just, expeditious, proportionate and affordable resolution of land disputes**.

8. This is a situation whereby the Article in question was published close to 20 years ago, thus the plaintiffs ought to have made efforts to get hold of the publication

before the hearing. Secondly, I have perused the evidence of Dw3 tendered during cross-examination. He states as follows on the issue of burning of houses; **“It was actually 2006 during the time of President Kibaki. Even my house was burnt with houses of about 200 people”**. Thus the filing of the application on the basis that Dw3 had denied the burning of houses is baseless. What more, there is nothing new in the newspaper cutting since the issue of the burning of houses was captured in that evidence of Dw3 in his witness statement and during cross examination.

9. This far, I find that the production of the newspaper cutting at this stage of the trial is un warranted. As such, I find that the application dated 26.9.2025 is unmerited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 4TH DAY OF MARCH 2026 THROUGH MICROSOFT
TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

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