



**Maruti v Maruti (Environmental and Land Originating Summons
E002 of 2024) [2026] KEELC 1558 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024**

CK NZILI, J

MARCH 18, 2026

BETWEEN

EZEKIEL SIMIYU MARUTI PLAINTIFF

AND

JAMIN SAID MARUTI DEFENDANT

RULING

1. The court is asked to review, vary, or set aside the judgment dated 24/9/2025, and to allow the defendant to adduce new and vital evidence which he has obtained from his bank, which he could not access at the hearing, to demonstrate that Banker's Cheque No. 021214 was not paid and or deposited in his Account No. 01501-327XXXX-XX in 2007 or a year after.
2. In an affidavit sworn on 18/11/2025, Jamin Said Maruti deposes that after the judgment, he managed to obtain a bank statement on 7/11/2025 from Standard Chartered Bank Kitale Branch for September 2007 to 25/3/2008, attached as EX-JSM-(1), which, though applied for earlier, had not been supplied.
3. The applicant deposes that from the bank statement, Cheque No. 021214 allegedly sent to him was not paid or cleared from his account; otherwise, it would have been reflected therein.
4. The applicant deposes that such evidence was very important and key to his defence that the plaintiff did not live on the suit land nor did he pay any money for the agreement dated 27/10/2007, as per annexure marked EX-JSM-2(a) and (b).
5. The applicant deposes that his mother and brother were ready and willing to testify in court if they had been advised properly by his former advocates on record.
6. Further, the applicant deposes that the court should review its judgment after allowing his application in the interest of justice, to be given a chance to present the bank statement and call the said witnesses.



7. The application is opposed through a replying affidavit of Ezekiel Simiyu Maruti, sworn on 7/12/2025 as an afterthought, lacking merits, abuse of the court process, a delaying tactic, and falling short of meeting the conditions for review or setting aside.
8. The respondent deposes that there is nothing to prove that at the time of the sale agreement, the defendant only had or was operating one bank account at Standard Chartered Bank, as alleged or at all, since the law allows more than one account according to one's needs or operations.
9. The respondent deposes that there is nothing to show that the applicant could not obtain the said bank statement at the time of the hearing or before the judgment, or that at the time, the bank was not in a position to supply him with the same.
10. The respondent deposes that there is no demonstration that there is new and important or vital evidence which he could not access at the hearing. The respondent deposes that the mistake of the advocate is not a ground to warrant review after a full hearing, since the applicant was not prevented by the court from producing such evidence which he had in his possession.
11. Further, the respondent deposes that, going by the judgment, the applicant executed and signed the sale agreement, received consideration, and handed over the original title; otherwise, the application is a delaying tactic to the execution of the decree.
12. Review applications based on the need to adduce new and fresh evidence are governed by Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. The parameters to consider were set out in *Rose Kaiza -vs- Angelo Mpanju Kaiza* [2009] KECA 422 [KLR]. The court held that such an application must be treated with great caution, that an applicant must establish that he acted with due diligence, and the existence of the evidence was not within his knowledge, or that even after exercise of due diligence, the same could not be produced before the court earlier. See *Paul Mwaniki -vs- National Hospital Insurance Fund Board of Management*[2020] eKLR.
13. As to adducing new and additional evidence, the parameters were set out in *Mohamed Abdi Mahamud -vs- Ahmed Abdullahi Mohamad & 3 Others* [2018] KESC 62. The court said that:
 - a. The additional evidence must be directly relevant and be in the interest of justice.
 - b. It must influence or impact upon the result of the verdict, although it is not decisive.
 - c. Where it seeks to remove any vagueness or doubt over the case, it must have a direct bearing on the main issue in the suit.
 - d. Where 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.
 - (e) Proportionality and prejudice of allowing the additional evidence has to be considered to balance between the significance of the additional evidence and the need for the swift conduct or litigation together with any prejudice that might arise from the additional evidence on the other hand.
14. In *Gachuki & Another -vs- Njenga & Others* [2025] KECA 451 (KLR) (7th March 2025) (Ruling), the court cited *Mzee Wanje & Others -vs- A.K. Saikwa* [1982-88] 1 KAR 462, that the rule is not intended for a litigant who has been unsuccessful at the trial to patch up the weak points in his case and fill up omissions, or remove lacunae or fill in gaps in his evidence. See also *Safe Cargo Ltd -vs- Embakasi Properties Ltd & Others* [2019] eKLR.



15. Applying the foregoing case law to the instant application, there is no evidence that the defendant, before the hearing of his defence, had sought the evidence from the bank. The defendant did not file, list, or seek the issuance of a witness summons to his bank during the pretrial conference, or mention that he was having difficulties in retrieving such evidence in support of his defence.
16. The defendant did not allude to such evidence in his witness statement at the time of filing the statement of defence or while testifying in court. The annexed bank statement is not indicated as to when it was supplied to the defendant. The exhibit is not certified.
17. The respondent has raised a reservation about how the intended evidence could impact the judgment and the failure of the applicant to exercise due diligence. The applicant has not demonstrated how, since the filing of the suit, he sought or attempted to access the documents, and or sought the court's assistance for the same.
18. The maker of the bank statement has not written a statement to confirm that the applicant was its customer for the period indicated, that he had applied for the bank statement, and that the alleged disputed cheque had not been banked with the bank with respect to the defendant's account.
19. As to whether the cheque went through or not, the easiest way would have been to trace the cheque from the issuing bank to see whether it was cleared in the clearing house and to which account.
20. In an application of this nature, the main consideration by the court is not even the newness of the evidence, but the efforts on due diligence that a party exercised in retrieving or availing that evidence before the court. Awareness of the evidence is an essential consideration.
21. In *C.S. Jirongo -vs- Soy Developers Ltd & Others* Petition Appl. No. 38 of 2019, the bank had, unlike in this case, authenticated and reviewed the petitioners' bank statement on the basis of vouchers provided. A letter had been written to the bank by the petitioner requesting the bank statement. A response from the bank was received in an attempt to retrieve the statements. The court found the application an abuse of the court process, seeking rather dubiously and ingeniously to reconstitute his case, amend and make contention to it by seeking to introduce supposedly new and fresh evidence. The court found that there was no due diligence in obtaining the evidence that he had prior knowledge of. As to relevance, or probative value of the evidence, the court said that once due diligence to obtain the evidence fails, the other factors are irrelevant.
22. In this application, the applicant is unable to show anything that he sought and could not obtain the bank statements before the hearing, or that the bank was only able to obtain or provide them to him after 2 months of the judgment. The court is not convinced in the absence of other evidence that the defendant had only one bank account at the time.
23. Further, the applicant seeks to call additional witnesses whom he has not listed on his witness list. He blames his erstwhile lawyers for this. A case belongs to a party, not its advocate. Advocates shall not always be blamed by parties for losing. Calling and availing of witnesses and documents is a duty of the party. In the circumstances, the court finds that the defendant is on a fishing expedition.
24. The application dated 18/11/2025 is dismissed with costs.
25. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF MARCH 2026.

In the presence of:



Court Assistant - Dennis

No appearance

HON. C.K. NZILI

JUDGE, ELC KITALE.

