

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E131 OF 2021

(CONSOLIDATED WITH ELC NO. E136 OF 2021)

HUSSEIN AHMED FARAH 1ST

PLAINTIFF

HUSSEIN UNSUR MOHAMED 2ND

PLAINTIFF

MOHAMED ABDIKADIR ADAN 3RD

PLAINTIFF

VERSUS

YUSUF ABDI ADAN

DEFENDANT

RULING

1. What is before the Court for determination is the Defendant's Notice of Motion dated 6th February 2026 where he seeks the following Orders:

a) Spent.

b) That the Honourable court be pleased to re-open the proceedings in this cause in order to accommodate the facts contained in the Defendant's/ Applicant's amended defence.

c) That the Honourable court be pleased to complete the record in this cause by incorporating the facts contained in the Defendant/Applicant's amended defence.

d) That the costs of the application be provided for.

2. The application is premised on grounds on its face and on the Defendant's supporting affidavit. He avers that the Plaintiffs having consented to him amending his defence, this case ought to be re-opened for him to be heard on the said amendments. Further, that the Plaintiffs will not be prejudiced if the suit is re-opened.

3. In response, the Plaintiffs filed a replying affidavit sworn by the 3rd Plaintiff. He avers that though the Plaintiffs consented

to the Defendant's amendments on 2nd December 2025, the said amendments raise a pure point of law being the Defendant's challenge on this Court's jurisdiction to determine the suit, as he contends that the dispute is a commercial one, which ought to be filed before the High Court-Commercial division. He contends that it is an issue that can be raised in submissions as the amended defence forms part of the Court record.

4. He insists that the application is frivolous and is only meant to delay determination of the matter. Further, that despite the Defendant's assertion in numerous applications filed herein that he is an octogenarian and that his health has deteriorated over the years, he has always employed every trick in the books to undermine any attempt to conclude the matter. He points out that on three occasions, the suit has been adjourned at the Defendant's instance thus he has squandered opportunities to present his defence. He reiterates that the defendant filed over six (6) applications

since the Case was closed in March 2025, yet he continues to disobey Court orders issued on the 26th April 2022 that directed tenants to deposit all rent collected from the suit properties into a joint interest earning account in the names of the parties' advocates with effect from 1st June,2022.

5. The application was canvassed by way of written submissions.

Submissions

6. The Defendant submits that amendment of pleadings can be allowed at any time before judgement. Further, that after his amendments were allowed, the Plaintiffs responded to his amended defence thus they are estopped from opposing his prayer to be heard.
7. He argues that it will be a gross miscarriage of justice and a breach of

Article 50 of the Constitution if the Court proceeds to determine the dispute without granting the Defendant an opportunity to be heard on his amended defence because once a party is allowed to amend, they have a right to be heard on the amendments as amendments introduce new circumstances. To buttress his averments, the Defendant relied on the case of **Joshua Kimani v Kiso Enterprises Ltd & 3 others [2020] eKLR**.

8. On their part, the Plaintiffs submit that the Defendant's application, which is filed very late in the day is intended to scuttle proceedings. They reiterate that he squandered opportunities to be heard and rely on the case of **Kenya Railways Corporation v Erdemann Property Ltd [2012] eKLR** to submit that litigation must come to an end.
9. They also submit that amendments introduced concern the issue of jurisdiction, a pure point of law and at the highlighting of submissions on 24th March 2025, Counsel for the Defendant submitted on the issue which does not require

additional evidence as the Court is well placed to determine whether it has jurisdiction. They urge the Court to decline the invitation to reopen proceedings.

Analysis and Determination

- 10.** Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether proceedings herein should be re-opened to allow the Defendant to adduce evidence in respect to issues raised in his amended defence.
- 11.** It is not in dispute that the Plaintiffs consented to an application filed by the Defendant seeking to amend his defence. The Defendant now seeks to reopen his case which was closed almost a year ago on the basis that he ought to be heard on the amendments introduced in his amended defence. The Plaintiffs argue that the Defendant squandered every opportunity to be heard thus he is employing tactics intended at delaying conclusion of the matter.

12. The Plaintiffs insist that the amendments introduced by the Defendant in his amended defence concern the issue whether this Court is clothed with jurisdiction to determine the suit and as such, it is a threshold issue that does not require additional evidence.

13. In **Samuel Kiti Lewa v Housing Finance Co. of Kenya Ltd & another [2015] eKLR**, it was held that:

“20.The court retains discretion to allow re-opening of a case. That discretion must be exercised judiciously. In exercising that discretion the court should ensure that such re-opening does not embarrass or prejudice the opposite party. In that regard re-opening of a case should not be allowed where it is intended to fill gaps in evidence. Also such prayer for re-opening of the case will be defeated by inordinate and unexplained delay.’

14. Further, in **Hannah Wairimu Ngethe v Francis Mungai Ng'ang'a & another [2016] eKLR**, it was stated:

“.....In my view this is an attempt by the Petitioner to have a second bite at the cherry. If he is allowed to re-open his case so as to prove it this would amount to allowing him to fill the gaps in his evidence after having heard the Objector’s case....”

15. The Supreme Court of Kenya has also laid guidelines for the admission of additional evidence in the case of **Mohamed Abdi Mahamud vs. Ahmed Abdullahi Mohamad & 3 others [2018] eKLR**, one of the prerequisites is that:

“....It is shown that it could not have been obtained with reasonable 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;”

16. On perusal of the amended Defence, I note at paragraph 22 and 23, the only issue raised in the said amended Defence is

that this Court is devoid of jurisdiction to handle the dispute herein. It is my considered view that since the amendments introduced by the Defendant are only on jurisdiction of this Court, it does not warrant reopening of the proceedings which has been heard and the only issue remaining is the delivery of judgement. I also note vide a Ruling delivered on the 18th December, 2024, Justice Omenge had actually dealt with the issue of reopening the proceedings to allow the Defendant to testify and she declined. It is not clear whether this Ruling was ever appealed against.

17. From the Court record, it is evident that the Plaintiffs had closed their case and the Defendant was granted several opportunities to proceed with his case, which he declined. Parties have since filed submissions to the substantive suit which were highlighted on the 24th March, 2025.

18. Based on the facts before me and in the interest of justice while

associating myself with the decisions quoted, I find that the Defendant has not provided plausible reasons to allow the Court reopen this case and I will decline to so.

19. In the foregoing, I find the instant Notice of Motion application unmerited and will dismiss it with costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
19TH DAY OF MARCH, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Maosa for Defendant

Court Assistant: Joan