



**Tibi & 6 others v Kenya Power and Lighting Company Limited (Civil Suit 104 of 2013) [2026] KEHC 4155 (KLR) (Civ) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4155 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL SUIT 104 OF 2013  
MA OTIENO, J  
MARCH 19, 2026**

**BETWEEN**

**MOSES GTIBI ..... 1<sup>ST</sup> PLAINTIFF  
JOHN MUHIA KANOTHA ..... 2<sup>ND</sup> PLAINTIFF  
MONICA MACHUMA ..... 3<sup>RD</sup> PLAINTIFF  
PETER ORARO ..... 4<sup>TH</sup> PLAINTIFF  
CHARLES GATHOGO ..... 5<sup>TH</sup> PLAINTIFF  
JOB W KAGUONGO ..... 6<sup>TH</sup> PLAINTIFF  
WILFRED RACHIEL ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**KENYA POWER AND LIGHTING COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. For determination is the 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> plaintiffs' application dated 10<sup>th</sup> September 2025 filed inter alia under Order 11, Rule 7 and Order 51, Rule 1 of the Civil Procedure Rules 2010. The Application seeks leave to file further additional documents out of time, and that the annexed documents be deemed as duly filed upon payment of requisite fees.
2. The Applicants contended that the documents in question recently came into their possession, despite prior diligent efforts to trace them, and that the documents are material, necessary, and relevant for the just determination of the dispute before the Court.



3. It was contended that the said documents were not within the Applicants' possession or knowledge at the time of the close of pleadings and prior to discovery.
4. The Applicant further averred that the Respondent would not suffer prejudice that could not be compensated by an award of costs and that the Respondent could be granted an opportunity to cross-examine the plaintiffs on the additional documents if necessary.
5. It was also asserted that it was in the interests of justice, and in line with the overriding objective of the court under sections 1A, 1B and 3A of the Civil Procedure Act, that the court considers the entire factual matrix of the dispute.
6. Lastly, the Applicants maintained that the court had wide discretion under Order 11 rule 7 of the Civil Procedure Rules, 2010, to allow the filing of further documents where necessary.
7. The Applicants therefore urged the Court to exercise its inherent and statutory discretion to allow the introduction of the said evidence in the interest of substantive justice.
8. The Respondent opposed the application vide grounds of opposition dated 28/10/2025 on the basis that it was irregular and had been brought late in the proceedings.
9. The Respondent contended that the reliefs sought related to issues that had already been canvassed during the hearing. It was further argued that the Applicants had failed to demonstrate any legal or factual basis to justify the orders sought and that the application was frivolous and baseless.
10. Consequently, the Respondent maintained that the application was incompetent, defective, bad in law, devoid of merit, and amounted to an abuse of the court process, and therefore ought to be dismissed with costs.

### **Analysis and determination**

11. In support of the instant application, the Applicants filed written submissions dated 4/11/2025, while the Respondent filed submissions dated 16/11/2025.
12. Having considered the application, the response thereto, the submissions, and the applicable law, I find that the core issue for determination is whether the court ought to grant the 3rd, 4th, and 7th plaintiffs leave to file further additional documents in support of their case out of time.
13. The Applicants submitted that they recently came into possession of missing documents that include contracts, invoices, and correspondence that are relevant and material to the issues before this court in the determination of this matter. The Applicants asserted that the said documents were not available to them at the time of filing the initial documents in this matter, despite their diligent efforts.
14. Section 3A of the Civil Procedure Act (Kenya), which provides:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
15. In the case of *Mahamud v Mohamad & 3 others* (Petition 7 & 9 of 2018 (Consolidated)) [2018] KESC 62 (KLR) (28 September 2018) (Ruling), the Supreme Court of Kenya held that: -

“We are convinced that disallowing the additional evidence would deny the Appellant a fair trial, which is a non-derogable right under our Constitution. In addition, we are satisfied that allowing the additional evidence is not prejudicial to any party and will be



in the interests of justice as the evidence is necessary and crucial in making of a proper judicial finding as to whether the Appellant had the requisite academic credentials to vie for governor of Wajir County which are core issues before the Court.”

16. In this case, the Applicant seeks to introduce further evidence arguing that it would support their case and clarify contested facts. The Respondent opposed it but did not prove any prejudice that it would suffer if the evidence were admitted.
17. The Court is guided by the principle that litigation should, as far as possible, be determined on the basis of all relevant material placed before it, rather than on technical omissions.
18. On the Respondent’s argument that the Applicants have not sought to reopen their case, this Court takes the view that procedural deficiencies should not override substantive justice. The prayer for leave to file additional documents necessarily invites the Court to exercise its discretion in a manner that may include reopening the case, where appropriate.
19. Further, any prejudice that may be occasioned to the Respondent can be adequately cured. The Respondent will have an opportunity to respond to the additional documents, including recalling witnesses for purposes of cross-examination, if necessary.
20. The Court finds that in the circumstances of this case, the appropriate approach would be to allow the application, since the Respondent, if they choose to do so, will still have the opportunity to cross-examine the Applicants on the new evidence.
21. In the premises, guided by the Supreme Court decision *Mahamud v Mohamad & 3 others* (Petition 7 & 9 of 2018 (*supra*)), that the right to be heard includes the right to adduce evidence to support its case, I will exercise my discretion and grant the application as sought. Accordingly:
  - i. The 3rd, 4th and 7th Plaintiffs are granted leave to file and serve the additional documents within 14 days from the date hereof upon payment of the requisite court fees.
  - ii. The Plaintiffs’ case is hereby reopened, limited to the production of the additional documents.
  - iii. The Defendant is granted leave to file any supplementary documents and/or witness statements, if necessary, within 14 days of service.
  - iv. The Defendant/Respondent shall have liberty to recall any witness or cross-examine on the additional documents.
22. Costs of the application shall be in the cause.
23. It is so ordered.

**SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 19<sup>TH</sup> MARCH 2026**

**ADO MOSES**

**JUDGE**

In the presence of: -

*C/A – Moses*

Mwenda.....for Plaintiff/Applicant

N/A.....for the Respondent

