

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 185 OF 2009

LUCY WAIRIMU MWANGI
PLAINTIFF/RESPONDENT

-VERSUS-

MONICA JACKLINE WAMBUI 1ST
DEFENDANT/APPLICANT

PAULINE MUKUHI NGANGA 2ND
DEFENDANT/APPLICANT

RULING

Introduction

1. This Ruling determines the Notice of Motion dated 10th February 2026 brought by the 1st and 2nd Defendants/Applicants seeking orders, inter alia, to arrest the delivery of a ruling scheduled for 26th February 2026 and for this Court to admit and consider what they describe as “new and material evidence”, namely a Forensic Document Examination Report dated 6th February 2026, allegedly discovered after the close of the trial and delivery of judgment.

2. The Applicants seek the following substantive orders:
 - i. That the delivery of the ruling scheduled for 26th February 2026 be arrested or stayed;
 - ii. That the Court admits and considers new and material evidence;
 - iii. That the Court considers a forensic investigation report allegedly demonstrating that the impugned transaction was fraudulent.

3. The Application is premised on Sections 1A, 1B, 3A, and 80 of the Civil Procedure Act, and Order 45 Rules 1 and 2 of the Civil Procedure Rules, and is supported by the affidavit of Monica Jackline Wambui, the 1st Defendant.

4. The Applicants state that, after the hearing had closed but before delivery of the pending ruling, they discovered crucial evidence previously unknown to them. They rely on a forensic report by *Spectral Forensic Services*, allegedly demonstrating that the transaction forming the subject matter of this suit was fraudulent.

5. They contend that the evidence was not within their knowledge and could not have been obtained with reasonable diligence during the trial. They urge that the evidence is central to the dispute and that failure to admit it would result in grave injustice.

6. The Application is opposed through a Replying Affidavit sworn on 25th February 2026 by the Plaintiff/Respondent, Lucy Wairimu Mwangi. Ms. Mwangi argues that the Application fails the test of “due diligence”.
7. The Respondent maintains that the Applicants were not diligent, pointing out that the 1st Defendant repeatedly admitted—both in pleadings and in testimony—that she signed the sale and transfer documents. She characterizes the Application as a calculated attempt to delay the matter and deny her the fruits of a judgment delivered in 2020.
8. She further submits that the litigation has spanned 16 years and must come to an end. She notes that the documents analyzed in the forensic report (A1-A37) have been in the trial bundle since 2012.
9. The Respondent therefore argues that allowing the Applicants to reopen the matter years after conclusion of the trial would amount to permitting parties to fill gaps in their evidence, leading to endless litigation.
10. The Application proceeded by way of written submissions. The Applicants, through **Ondieki & Co. Advocates**, filed submissions dated 9th March 2026. The Respondent, through **Acorn Law LLP**, filed submissions

dated 9th March 2026 and supplementary submissions dated 10th March 2026.

Analysis and Determination

11. I have carefully considered the Application, the supporting and replying affidavits, the parties' submissions, the forensic report, and the record. The key issue for determination is whether the Applicants have met the legal threshold for admission of additional evidence after conclusion of a trial.
12. Before turning to that issue, the Court finds it necessary to briefly revisit the background of this dispute. The matter concerns Maisonette No. 6, Casablanca Villas, on L.R. No. 209/5827, Nairobi. The Plaintiff contends that she lawfully purchased the property from the 1st Defendant through an Agreement for Sale dated 13th January 2009 for Kshs. 13,700,000, which she paid in full.
13. Correspondence and documentation show that the Plaintiff was granted possession, undertook renovations, and utility accounts were changed to her name with the knowledge and participation of the 1st Defendant.
14. The Defendants claimed the 1st Defendant lacked mental capacity due to mental illness, and that the transaction was procured through fraud, coercion, undue

influence, and misrepresentation by the advocate then acting for her. These allegations were raised as early as their Defence and Counterclaim filed in 2011.

15. After a full hearing, this Court (Nzioka J.) delivered judgment on 18th May 2020 dismissing the Defence and Counterclaim and upholding the sale.
16. The Defendants thereafter filed multiple post-judgment applications and appeals. The Court of Appeal dismissed their application for stay on 7th May 2021, dismissed their application for extension of time on 23rd September 2022, and dismissed their application for review on 23rd May 2025.
17. Despite these outcomes, the Defendants have remained in occupation. The Plaintiff accuses them of filing numerous applications solely to delay execution.
18. The Defendants insist that the present Application is bona fide and that the new forensic report will show that the signatures on the transaction documents are forgeries.
19. Against this background, the Court must determine whether the Application meets the threshold for admission of new evidence at this stage.

Whether the Applicants have satisfied the threshold for admission of new evidence

20. The Applicants rely primarily on Order 45 Rule 1 of the Civil Procedure Rules, which governs review of decrees or orders. Admission of additional evidence under this rule requires strict satisfaction of the test of reasonable diligence.
21. In particular, Order 45 Rule 1 requires that an applicant must establish that the evidence was not within their knowledge, could not have been obtained earlier despite due diligence, and that the evidence is so material that it would likely affect the outcome.
22. The principles are settled. In *Susan Wavinyaa Mutavi v Isaac Njoroge (2020) eKLR*, the Court held that such evidence must not have been obtainable with due diligence and must not be intended to fill gaps in a party's case.
23. In the present case, although the forensic report is dated 2026, the documents examined (A1-A37) were exchanged between the parties as early as 2012. The Plaintiff has even identified their precise locations in the trial bundle.
24. The Applicants have offered no explanation why they did not commission a forensic analysis of documents that were in their possession for over a decade.

25. Indeed, the forensic examiner confirms that instructions to examine the documents were only issued on 29th January 2026—long after the trial and appeals had concluded.

26. The Court therefore finds that the Applicants have failed the “reasonable diligence” test under Order 45 Rule 1.

27. Further, the forensic report contradicts the Applicants’ own earlier admissions. The 1st Defendant admitted in her Defence, witness statement, and oral testimony that she signed the relevant documents. The Court of Appeal, in its judgment of 23rd May 2025 (at paragraphs 27 and 28), expressly affirmed these findings.

28. Having pronounced itself conclusively on the issues of fraud and mental incapacity, it is not open to this Court to reopen those issues through the back door.

29. The Court agrees with the Respondent that reopening the case at this stage would undermine judicial finality.

30. In **Benjoh Amalgamated Ltd & another v Kenya Commercial Bank Ltd [2014] KECA 872 (KLR)**, the Court of Appeal affirmed that where a matter has been fully litigated on the merits, the public interest in finality outweighs the desire to re-examine alleged injustices.

31. In this case, the issues the Applicants now seek to re-introduce have been previously raised and fully adjudicated. The chronology also shows persistent attempts to delay execution.

32. I am therefore persuaded that the Application is frivolous, vexatious, and an abuse of the court process.

33. Accordingly, the Notice of Motion dated 10th February 2026 is hereby dismissed with costs to the Plaintiff.

34. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI
THIS 9TH DAY OF APRIL 2026**



HON. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A - Moses

Ondieki.....for the Applicant/Defendants

Ojiambo.....for the Respondents/Plaintiff