



**Mikwa & another v Wambugu & 2 others (Environment and Land Appeal
E023 of 2024) [2026] KEELC 2132 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E023 OF 2024**

**LN MBUGUA, J
APRIL 16, 2026**

BETWEEN

BONIFACE MIKWA 1ST APPELLANT

TERESA ARUTHI LOTURO 2ND APPELLANT

AND

BERNARD NDERITUU WAMBUGU 1ST RESPONDENT

COUNTY GOVERNMENT OF SAMBURU 2ND RESPONDENT

**AG CHIEF OFFICER LANDS SAMBURU COUNTY GOVERNMENT 3RD
RESPONDENT**

RULING

1. Before me is a notice of motion application dated 25.9.2025 where the appellants are seeking orders to adduce and file additional documentary evidence which documents have been availed as annexure 1 in the supporting affidavit. They argue that the document in question is a letter from CECM Lands Physical Planning, Housing and Urban Development indicating that the appellants were originally registered as the proprietors of the suit plot 186A and there is no search indicating that the parcel was ever transferred.
2. They contend that the said letter was not reasonably available at the time of the hearing.
3. The application is opposed by the 1st respondent vide his Grounds of Opposition dated 10.10.2025 where he avers that the appellants had all the time to bring whichever evidence they had at the trial which lasted several years, adding that litigation must come to an end.
4. I have considered the rival arguments and submissions. The issue for determination is whether the appellants should be allowed to adduce more evidence which is the letter from the CECM annexed to the supporting affidavit.



5. The governing law on production of additional evidence is primarily anchored on Order 42 Rule 27 of the Civil Procedure Rules, where it is stated that;

“(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the court to which the appeal is preferred; but if—

(a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or

(b) The court to which the appeal is preferred requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

The court to which the appeal is preferred may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by the court to which the appeal is preferred the court shall record the reason for its admission”.

6. In the case of Geoffrey Muriungi & another v John Rukunga M’Imonyo [2017] eKLR, Gikonyo J held that;

“Doubtless, the appellate court has power to call for and admit additional evidence on appeal, but that power should be utilized sparingly only in apt cases where exceptional circumstances exist.”

7. In *Wanjie & Others V Sakwa & Others* (1984) KLR 275, the Court of Appeal considered the rationale for the restriction of reception of additional evidence- albeit under Rule 29 of the Court of Appeal Rules in the following words

“This rule is not intended to enable a party who has discovered fresh evidence to import it nor is it intended for a litigant who has been unsuccessful at the trial to patch up the weak points in his case and fill up omissions in the Court of Appeal. The Rule does not authorize the admission of additional evidence for the purpose of removing lacunae and filling in gaps in evidence. The appellate court must find the evidence needful. Additional evidence should not be admitted to enable a plaintiff to make out a fresh case in appeal. There would be no end to litigation if the rule were used for the purpose of allowing the parties to make out a fresh case or to improve their case by calling further evidence. It follows that the power given by the rule should be exercised very sparingly and great caution should be exercised in admitting fresh evidence.”

8. This is a situation whereby judgment was delivered on 15.11.2024. The document which the appellants desire to produce is dated 27.5.2025. The question begging for an answer is; what prompted the CECM Lands to write this letter to the court post judgment of the trial court? The only logical conclusion is that the letter was written at the behest of the appellants, so as to improve their case post judgment, a situation which is untenable.

9. In the circumstances, I find that the application dated 25.9.2025 is not merited, the same is hereby dismissed with costs to the 1st respondent.



**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 16th DAY OF APRIL 2026
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Bedan/Vanessa – Court Assistants

Lenkidi for Appellants

Kamunya holding brief for Kihoro for 1st Respondent

No appearance for 2nd and 3rd Respondents

