



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA NO E031 OF 2025

HILARY KIBUU KAMAUAPPELLANT

VERSUS

ALICE NJERI GAKERE 1ST RESPONDENT

MARGARET WAIRIMU 2ND RESPONDENT

HANNAH WAITHIRA 3RD RESPONDENT

(Being an Appeal against the judgment of Hon. J.B.A Olukeye Acting Resident Magistrate delivered on 19th January, 2000 in Murang'a PMCC No. 290 of 1993).

RULING

(1) This ruling is on the notice of motion dated 26-11-2025. The motion which is by the Appellant is brought under **Section 78** of the **Civil Procedure Act, Order 42 rules 27, 28 and 29** of the Civil Procedure Rules and all enabling provisions of the law.

(2) The motion seeks three orders.

- (i) **The Appellant be allowed to adduce additional evidence, in particular to produce the certified copy of proceedings in Murang'a PMCC No. 267 of 1999, Hannah Nduta Maina vs. Hillary Kibuu Kamau.**
- (ii) **The additional evidence be adduced by means of a supplementary record of appeal.**
- (iii) **Costs of this application be provided for.**

(3) The motion is based on seven grounds and a supporting affidavit by Francis Mwangi Hillary dated 1-12-2025. The gist of the motion is as follows. The case appealed against, that is to say, **Murang'a PMCC 290 of 1993** was instituted and concluded earlier than **Murang'a PMCC No. 267 of 1999, that is to say, Hannah Nduta Maina Vs. Hillary Kibuu Kamau.** The Judgment in the case appealed against was delivered on 19-1-2000 while the judgment in PMCC 267 of 1999 was delivered on 14-11-2000 which is ten (10) months after the

conclusion of the Appealed case. Two, because of this, the Appellant could not have produced the proceedings in case No. 267/1999 as evidence in case No. 290/1993. Three, the two suits involved the suit land No. Loc. 18/Marumi/40 and that is why the latter case was found to be *res judicata*. The proceedings in this latter case are likely to impact upon this appeal. For the above reasons, the Appellant prays that the motion be allowed.

(4)The motion is opposed by the Respondents who have filed three grounds of opposition dated 2-2-2026 which read as follows.

(a) The application is frivolous, vexatious and an abuse of the due process.

(b) It does not meet the requisite mandatory provisions of Order 42 rule 27 of the Civil Procedure Rules.

(c) The proceedings in case No. 267 of 1999 were not part of and have never been produced in case No. 290 of 1993 and the Respondents were not parties to suit No. 267 of 1999.

(5)In addition to the grounds of opposition the 3rd Respondent has sworn a replying affidavit dated 2-2-2026 which is to the same effect as the grounds of opposition.

(6)Counsel for the Appellants filed written submissions dated 14-3-2026 in which he identified the following issues for determination.

(i) Whether the proceeding in PMCC No. 267 of 1999 could have been produced in PMCC No. 290 of 1993.

(ii) Whether PMCC 267 of 1999 was res judicata due to PMCC No. 290 of 1993.

(iii) Whether the application is frivolous, vexatious and an abuse of the court process.

The Respondents' counsel chose not to file any submissions.

(7)I have carefully considered the motion in its entirety including the grounds in support, those in opposition, the affidavits, the written submissions, the law cited in the submissions and the entire record. I find that the issues identified will resolve the motion.

(8)Regarding the first issue, I find that the proceedings in PMCC No. 267 of 1999 could not have been produced in PMCC No. 290 of 1993 because the older case was concluded earlier than the latter case. Both sides are in agreement on this issue.

(9)As for the second issue, I find that case No. 290 of 1993 and case No. 267 of 1999 do not relate to the same parties and the same cause of action. In case No 290 of 1993, the three widows of Gakere Kibuu namely Alice Njeri, Margaret Wairimu and Hannah Waithira were claiming their husband's share of the suit land. In case No. 267 of 1999 it was Hannah Nduta Maina claiming a share of the suit land which her husband Maina Kibuu was entitled to. While Gakere Kibuu was a brother to Kamiru Kibuu, Maina Kibuu was a step brother. The only common denominator in the two claims was that the brother's and the step-brother's widows claimed 0.6 acres. Their case was simply that the senior brother, Kamiru Kibuu, was registered as a trustee for his brothers and step brothers because the land did not belong to him alone but to all the sons. Since the parties were not the same in the two suits and the causes of action were different, the res judicata doctrine cannot apply at all.

The above being the case, the evidence sought to be adduced on appeal has no bearing to this case.

(10) The finding in regard to the 3rd issue is that the application is frivolous, vexatious and abuse of the Court process because the additional evidence sought to be adduced will not be of any assistance to the Court in resolving this appeal. It is irrelevant to the issues before this Court. The Appellant is not saying that he was denied a chance to adduce his evidence. He has also failed to prove the relevance of the said evidence in this case.

The motion fails the threshold in **Order 42 rule 27 of the Civil Procedure Rules** and **Section 78 (1) (d) of the Civil Procedure Act**.

(11) In conclusion and for the reasons given, I **dismiss** the motion dated 26-11-2025.

Costs in the cause.

Dated, Signed and Delivered virtually at Murang'a this 4th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -
Court Assistants – Jackline and Antony
Appellant's Counsel – Absent
Respondent's Counsel – Mr Mwangi Ben