



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. E061 OF 2022**

**JANE NYAGITHA MIANO.....1<sup>ST</sup> PLAINTIFF/  
APPLICANT**

**PETER GRAHAM MOLL, JANE NYAGITHA MIANO, NYAWIRA  
MIANO & LINDSEY TINGESI MOLL (*Suing as personal  
representatives of the Estate of NANCY GACHEKE MOLL  
(Deceased )..... 2<sup>ND</sup> PLAINTIFF***

**VERSUS**

**THE CHIEF LAND REGISTRAR .....1<sup>ST</sup>  
DEFENDANT**

**HON. ATTORNEY GENERAL .....2<sup>ND</sup>  
DEFENDANT**

**ANNA NUNA KAAKUA..... ...3<sup>RD</sup>**

**DEFENDANT**

**JULIUS RIES KAAKUA.....4<sup>TH</sup>**

**DEFENDANT**

***(3<sup>rd</sup> and 4<sup>th</sup> defendants sued as personal representatives of the Estate of KAAKUA OLE LEKAKUA (Deceased))***

**RULING**

1. The matter comes up for determination of the Application dated **22<sup>nd</sup> December 2025** in which the 1<sup>st</sup> Plaintiff seeks leave to file a supplementary list of witnesses and to introduce the statement of one Racheal Muthoni Ndumba.
2. It is premised on the grounds that the intended witness, one Racheal Muthoni Ndumba served as the 1<sup>st</sup> Plaintiff's Personal Assistant from April 1983 to December 2006. She however lost contact with Ms. Racheal after retiring and closing her medical practice in December 2006. That despite efforts to find her before filing the case in 2022,

she only established contact with her in September 2025. She avers that the intended witness is critical in ascertaining the facts of the suit and will not be prejudicial to the Defendants.

3. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants oppose the application deposing that it is an afterthought, an abuse of the Court process and aimed at filling gaps from the Plaintiff's testimony. They point out that the 1<sup>st</sup> Plaintiff had already testified and closed her case. And that the name of the intended witness was never mentioned in the initial pleadings or witness statements and only surfaced during cross-examination. Therefore, allowing the Plaintiff to call her as a witness was allowing her to fill gaps in their testimony which would be prejudicial to the Defendants.
4. Counsels orally submitted in support of their respective positions. The sole issue for determination is whether the Court should exercise its discretion to allow the Plaintiff to introduce an additional witness.
5. The Application seeks to allow the Plaintiff file a supplementary witness statement and call an additional

witness. The Defendants contest that calling a new witness after close of the Plaintiff's case is intended to fill gaps exposed during cross-examination.

6. While the 3<sup>rd</sup> and 4<sup>th</sup> Defendants argue that the Plaintiffs had closed their case, the Court notes from the record that after the testimony of PW2, counsel for the Plaintiff sought an adjournment to call a final witness and counsel for the Defendants did not object at that stage. The subsequent objection arose on account of the procedural irregularity of filing the witness statement without leave of Court.
7. The power of the Court to allow additional evidence or witnesses is discretionary and must be exercised judiciously in the interest of justice. This discretion is anchored under **Sections 1A, 1B and 3A of the Civil Procedure Act** which mandate the Court to act in a manner that ensures the just, expeditious, proportional, and affordable resolution of disputes and that orders issued should be necessary for the ends of justice or to prevent abuse of the process of the court.

8. Taking this into consideration, the Court finds that in the interest of justice, and fair trial, and considering the high stakes in a land matter, there are sufficient grounds for the court to exercise its discretion and allow the Plaintiff to file the witness statement and call their last witness. The Defendants will have an opportunity to cross-examine the intended witness mitigating any potential prejudice that could be occasioned.
9. The Application is thus allowed in the following terms;

- a. Leave is hereby granted to the Plaintiffs' to file a supplementary list of witnesses and documents if any within 14 days of this Ruling.**
- b. The Plaintiff is ordered to serve the Defendants within 14 days of filing.**
- c. The Defendants shall have corresponding leave to file any supplementary witness statements and documents if necessary, within fourteen (14) days of service.**

**d. Costs of the application shall abide outcome of the main suit.**

**Dated, Signed and Delivered virtually at Kajiado this 7<sup>th</sup> day of May 2026.**

**JUDY OMANGE**

**JUDGE**

**Ruling delivered in presence of**

Mr Munyororo for the Plaintiff.

M/S Nyawira for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

Ms Misiati Holding Brief for Prof Ojienda SC for 3<sup>rd</sup> and 4<sup>th</sup> Defendant.

Peter - Court Assistant.