



Ngara Girls High School & another v Edermann Property Limited & another; Ministry of Education (Interested Party) (Constitutional Petition E066 of 2024) [2024] KEELC 13977 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13977 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CONSTITUTIONAL PETITION E066 OF 2024**

**MD MWANGI, J
DECEMBER 19, 2024**

BETWEEN

**BOARD OF MANAGEMENT, NGARA GIRLS HIGH SCHOOL 1ST
PETITIONER**

LOISE NDOTU MWATHE 2ND PETITIONER

AND

EDERMANN PROPERTY LIMITED 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

THE MINISTRY OF EDUCATION INTERESTED PARTY

RULING

1. The Notice of Motion dated 11th November, 2024 is by the 1st Respondent in this case who seeks two prayers, viz;
 - a. To arrest the ruling in respect of the Plaintiff’s application dated 8th August, 2024 scheduled for 19th December, 2024.
 - b. To re-open the hearing of the application dated 8th August, 2024.
2. The 1st Respondent alleges that it has come across some material evidence which the Petitioners deliberately withheld from the court. The re-opening of the hearing of the application will allow the 1st Respondent to produce that material evidence that will assist the court in arriving at a just determination of the application. The 1st Respondent asserts that its application is made in good faith and it has no intention of delaying the hearing and determination of the matter.



3. The application was strenuously opposed by the Petitioners who allege that the intention of the 1st Respondent is to forestall the hearing and determination of the Petition and the Application dated 8th August, 2024. Re-opening the application will amount to duplicity on the same issues which had already been canvassed.
4. The materials allegedly ‘discovered’ by the 1st Respondent had already been placed before the court. The consent recorded in HCCC 346/2005 had been placed before the Court and was part of the documents produced by the Petitioners as attachments in the supporting affidavit. The Petitioners insist that they had disclosed all relevant materials to the court.
5. The 2nd Respondent and the Interested Party too opposed the application by the 1st Respondent. They fully associated with the sentiments of the Petitioners. They pointed out that the documents sought to be introduced by the 1st Respondent have no correlation with the 1st Respondent. They are not authored by him nor addressed to him. Their admissibility was called into question. In any event, what the court is handling at this point in time is an interim application only. The issue of ownership of the suit property cannot be determined at this point in time. It must await the full hearing of the Petition.

Determination

6. In making this ruling, the court cautions itself that what it is handling is an interim application. It will therefore be frugal with its words in order not to prejudice the hearing of the main Petition and the Application dated 8th August, 2024 pending before it.
7. In the case of *Wavinya Mutavi – vs- Isaac Njoroge & Another (2020) eKLR* the court while considering an application to re-open a case observed that;

“Over the years, Kenya’s superior courts and courts in the Commonwealth have developed principles which guide the exercise of jurisdiction to re-open a case and receive additional evidence in a civil trial court. First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty-bound to ensure that the proposed re-opening of a party’s case does not embarrass or prejudice the opposite party. Second, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the court will not grant the plea. Third, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on the part of the applicant. Fourth, the applicant is required to demonstrate that the evidence he seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive. Lastly, the evidence must be apparently credible, though it need not be incontrovertible.”

Similarly, in *Smith v New South Wales (1992) HCA 36, (1992) 176 CLR 256* where it was held: “If an application is made to reopen on the basis that new or additional evidence is available, it will be relevant, at that stage, to enquire why the evidence was not called at the hearing. If there was a deliberate decision not recorded, ordinarily that will tell decisively against the application. But assuming that that hurdle is passed, different considerations may apply depending upon whether the case is simply one in which the hearing is complete, or one which reasons for the judgment have been delivered. In the latter situations the appeal rules relating to fresh evidence may provide a useful guide as to the manner in which the discretion to reopen should be exercised.”



Sequence of events in this litigation does not inspire confidence for this court to exercise discretion to re –open the proceedings as urged by the applicant. The guidelines in the above cases shuts the door for the Applicant to proceed further to adduce evidence in support of his case.”

8. Considering the 1st Respondent’s application against the principles outlined above, I am not persuaded that the 1st Respondent has established a case for the re-opening of the hearing of the Petitioner’s application dated 8th August, 2024. The 1st Respondent has not convinced this court that the evidence it seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of the Petitioner’s application dated 8th August, 2024.

9. I disallow the 1st Respondent’s application dated 11th November, 2024 with costs to the Petitioners.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF DECEMBER, 2024.

M.D. MWANGI

JUDGE

*In the virtual presence of:

Mr. Oching Oginga for the Petitioners

Mr. Allan Kamau for the 2nd Defendant and Interested Party

N/A by the 1st Respondent

Court Assistant: Joan

M.D. MWANGI

JUDGE

