



**Gorasia v Republic (Criminal Appeal E085 of 2021)
[2025] KEHC 2533 (KLR) (Crim) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E085 OF 2021
K KIMONDO, J
FEBRUARY 27, 2025**

BETWEEN

RAMESHCHANDRA GOVIND GORASIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant seeks to review, vary or set aside the ruling and order of the High Court (Bwonwonga J) delivered on 22nd November 2022.
2. He had lodged a notice of motion dated 16th March 2022 seeking, among other reliefs, the grant of leave to adduce new evidence during the hearing of the appeal. The Director of Public Prosecutions raised a preliminary objection. The learned judge upheld the objection with the result that the entire notice of motion was dismissed.
3. Initially, the appellant filed a Notice of Appeal dated 2nd December 2022 to the Court of Appeal. In a further Notice of Motion dated 19th January 2023, he sought to stay the proceedings at the High Court. The appellant withdrew that motion on 24th October 2023.
4. The notice of appeal aforementioned was equally withdrawn on 18th March 2024 paving the way for hearing of the instant application. The application was subsequently amended and is now dated 29th July 2024.
5. The brief background is that on 21st September 2021, the appellant was convicted by the lower court on two counts of uttering a false document; and, forcible detainer contrary to sections 353 and 91 of the [Penal Code](#). The offences related to a forged title or possession of the property known as IR 141915



LR No. 20273 situated in Embakasi and which belonged to Siesta Investment Limited (hereafter the suit land).

6. On 24th September 2021, he was fined Kshs 500,000 on Count I in default 12 months imprisonment; and, Kshs 50,000 on Count II in default 6 months imprisonment. In addition, the certificate of title held by the accused was forfeited to the State.
7. Being aggrieved, he lodged this appeal at the High Court. It is still pending for hearing and determination.
8. The amended application is conceded by the respondent on the grounds that the evidence is fresh or relates to public records held by the Ministry of Lands; and, that it will assist the court to determine the guilt or innocence of the appellant. From the history I have captured above, this position by the State is a complete about-turn.
9. The applicant has filed detailed submissions and a list of authorities dated 17th January 2025. The respondent also filed its submissions on 13th January 2025.
10. On 23rd January 2025, I heard brief submissions from both learned counsel for the applicant and the Republic.
11. I take the following view of the matter. I have kept in mind that the main appeal against the judgment of the lower court is still pending at the High Court. For that reason, and in view of the decision I propose to make, it would be prejudicial to delve too deep into the merits of the appeal.
12. I must also clarify at the onset that this is not an appeal against the impugned decision of Bwonwonga J. And it cannot possibly be because I have no jurisdiction to sit over an appeal against the ruling of a judge of concurrent jurisdiction. Rather, it is a prayer to review, vary or set aside that decision. Accordingly, the pathway for such review is narrow and very limited. See generally, *R v Diana Suleiman Said & Another*, Mombasa High Court Misc. Appl. 55 of 2014 [2014] eKLR.
13. Section 358 (1) of the *Criminal Procedure Code* grants the High Court, for reasons to be recorded, the power to call for additional evidence at the hearing of an appeal in the following terms:

In dealing with an appeal from a subordinate court, the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court. [underlining added]
14. The key parameter for the High Court is whether it thinks additional evidence is necessary. The Supreme Court in *Patrick Thoithi Kanyuira v Kenya Airports Authority*, Petition 7 of 2017 [2021] KESC 7 (KLR) restated the rule in *Ladd v Marshall* [1954] 1 WLR 1489 where Denning LJ stated-

In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive: thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible
15. Returning now to the matter at hand, the learned judge was not satisfied that the applicant had met that threshold. After analyzing the relevant case law, he found as follows at paragraphs 12 to 16:

(12) Turning now to the notice of motion and the underlying facts, I will direct my attention to the nature of the evidence sought to be admitted. First, could the applicant have obtained the



new evidence during trial in the lower court? In the application and affidavit by the applicant, he alludes to a copy of the original transfer, a copy for an application for registration alongside the stamp duty payment slips, a letter dated February 23, 2017, a copy for the 2017 search as well as payment for land rent for that year by Taj Mall Limited, a letter dated April 26, 2018 from Nairobi City County addressed to the Chief Land Registrar and a copy of the report by Mr. Mohammed Karisa Kenga, which verified the signatures of the title documents. He claims that these documents were not in his position [sic] at the time the trial was conducted in the subordinate court. Further, that if the trial court had considered the said documents, it would have reached a different verdict.

- (13) In the present case, the applicant has not been candid on whether the intended additional evidence is new, and when he became aware of the same. A perusal of the evidence he intends to be admitted indicates that they are transfer of land documents. These are public documents which were available and could have been obtained with due diligence by the applicant. The applicant could have obtained them if he had wanted them, since they were all along available. The applicant has not complained that he sought the documents but they could not be availed.
 - (14) I find that the applicant has neither demonstrated that the purported additional evidence is new, nor that he could not avail it or act on it during trial. The fact that the documents were not produced in court during the trial, is not sufficient reason to justify introduction of the additional new evidence on appeal.
 - (15) Consequently, I find that the preliminary objection of the respondent/Republic is merited and is hereby upheld.
 - (16) The upshot of the foregoing analysis is that the applicant has not met the threshold for the grant of leave to adduce additional new evidence on appeal.
16. The present amended notice of motion seeks fairly similar reliefs as the ones that were before Bwonwonga J. Then as now, the applicant sought an order directing the Ministry of Lands to provide the registration book bearing entry number 996 as well as to admit evidence from Maina Rogoi Advocate, Mose Nyambega Advocate, the chief valuer whose name appears in the letter dated April 26 2018 as Nyoike N.I. and the custodian of the registration book that “proves registration of the transfer of Taj Mall Limited”.
 17. In the amended notice of motion, the applicant proposes to call other witnesses being Erastus Mundia, Kombo Mwero, Evans Ombogo and one John T/A Kahawa Sukari Hardware. The latter witnesses did the survey computations; approved or authenticated the field work; sold the suit land to Taj Mall Limited; and, excavated the plot respectively.
 18. The point to be made is that the documents and all the witnesses in the amended motion are meant to demonstrate that the applicant, and by extension Taj Mall Limited, was the rightful owner of the suit land. In paragraph 14 of the impugned ruling that I set out in extenso, the learned judge found:
 - (14) I find that the applicant has neither demonstrated that the purported additional evidence is new, nor that he could not avail it or act on it during trial. The fact that the documents were not produced in court during the trial, is not sufficient reason to justify introduction of the additional new evidence on appeal.
 19. Any doubt that the applicant is seeking to review the findings of fact or law by the learned judge is removed by paragraph 7A of the supporting affidavit where he avers that the learned judge “erred in dismissing the application dated 16th March 2022 based on the fact that the documents sought to be adduced were public documents available to me”.



20. I thus readily find that the entire application is a challenge to the findings of fact and opinion by the learned judge which can only be overturned by an appeal to the Court of Appeal. Paraphrased and despite the turn-around position now taken by the Director of Public Prosecutions, there are no sufficient grounds for review at the High Court.

21. In the upshot, the amended notice of motion dated 29th July 2024 is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Applicant.

Ms. Awino for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

