



**Miguna v Standard Group PLC & 2 others (Civil Case 6 of 2016)  
[2025] KEHC 1181 (KLR) (Civ) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1181 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE 6 OF 2016**

**LP KASSAN, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**MIGUNA MIGUNA ..... PLAINTIFF**

**AND**

**STANDARD GROUP PLC ..... 1<sup>ST</sup> DEFENDANT**

**VINCENT KEJITAN ..... 2<sup>ND</sup> DEFENDANT**

**KIPKOECH TANUI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before the Court is the Defendants/Applicants' application dated 19.07.2024, brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* (Cap 21), Section 146 of the *Evidence Act*, Order 18 Rule 10, and Order 51 of the Civil Procedure Rules, 2010. The Defendants seek the following orders:
  - a. Spent
  - b. That this Court be pleased to admit in evidence the screenshots of the tweets from the Plaintiff's X (Twitter) account regarding the Likoni Channel accident as annexed hereto.
  - c. The Plaintiff be at liberty to be recalled for examination in chief and cross-examination limited to the contents of the additional documents.
  - d. That the costs of this Application be provided for.

**Defendants/Applicants' Case**

2. The Defendants contend that the Plaintiff testified that there were no negative comments in response to his tweets about the Likoni Channel accident, which they claim were defamatory. They argue



that their article was based on the Plaintiff's social media posts and the reactions they attracted. The Defendants seek to introduce the omitted comments to provide full context for the court's consideration. They maintain that admitting this evidence will not prejudice the Plaintiff, as he is aware of the tweets and will have the opportunity to respond. The application is supported by the affidavit of Anthony Makokha.

### **Plaintiff/Respondent's Case**

3. The Plaintiff opposes the application, arguing that Order 11 of the Civil Procedure Rules requires parties to file and serve pleadings and evidence before trial, except by consent or with leave of the court. He asserts that the Defendants filed their Statement of Defence over four years ago without mentioning the negative comments they now seek to introduce. The Defendants also allegedly failed to reference these comments in their Witness Statement filed on 11<sup>th</sup> October 2023 or during cross-examination of the Plaintiff on 18<sup>th</sup> July 2024.
4. The Plaintiff contends that the comments lack essential details, such as URLs linking them to the relevant tweets, and may be unrelated. Additionally, the Defendants have not provided a certificate of authentication as required under Section 106B of the *Evidence Act*, making the comments inadmissible. He argues that allowing this evidence at this stage would be prejudicial, as he would not have an opportunity to challenge its validity.

### **Plaintiff/Respondent's Preliminary Objection**

5. The Plaintiff filed a preliminary objection dated 18.09.2024, asserting that the application is incompetent and an abuse of court process. He reiterates that the Defendants are bound by their pleadings and cannot introduce new evidence without proper justification. He maintains that the comments are inadmissible due to lack of authentication and that the application is a tactical attempt to remedy deficiencies in the Defendants' case.

### **Issues for Determination**

- i. Whether the Defendants' screenshots of the Plaintiff's tweets should be admitted into evidence?
- ii. Whether the Plaintiff should be recalled for examination on the additional documents?
- iii. Who should bear the costs of the application?

### **Analysis and Determination**

6. The court has considered the pleadings, submissions, and legal authorities cited by the parties. The admission of additional evidence after trial has commenced is a matter of judicial discretion, guided by principles established in case law. The key considerations include:
  - i. Whether the proposed evidence could have been obtained with reasonable diligence before trial.
  - ii. Whether its admission would prejudice the opposing party.
  - iii. Whether the evidence is relevant and would materially affect the outcome of the case.
7. Section 146(4) of the *Evidence Act* and Order 18 Rule 10 of the Civil Procedure Rules grant the court discretion to recall witnesses. However, this discretion must be exercised judiciously and should not be used to fill gaps in a party's case.



8. In *Susan Wavinya Mutavi v. Isaac Njoroge & Another* [2020] eKLR, the court outlined principles for reopening a case, including the need to prevent prejudice to the opposing party, the requirement for reasonable diligence in obtaining the new evidence, and the potential impact of the evidence on the case's outcome. Similarly, in *Raila Odinga & 5 Others v. IEBC & 3 Others* [2013] eKLR, the Supreme Court emphasized that parties must comply with procedural timelines to ensure a fair trial.
9. The Defendants/Applicants have not demonstrated that the comments they seek to introduce could not have been obtained earlier with reasonable diligence. Their failure to plead this evidence in their defence or reference it in their witness statement suggests an attempt to introduce new material belatedly. Additionally, the lack of authentication under Section 106B of the [Evidence Act](#) raises admissibility concerns.
10. Allowing the application at this stage would disrupt trial management and prejudice the Plaintiff, who would not have had prior notice of the evidence. The court must balance the need for procedural fairness against the Defendants' right to a fair hearing. In this case, the prejudice to the Plaintiff outweighs any potential benefit of admitting the new evidence.
11. I have considered the Respondent's preliminary objection, which mirrors their response in opposition to the application. Having already dismissed the application, I find no need to delve further into an analysis of the preliminary objection.

### **Conclusion**

12. For the reasons outlined above, the application lacks merit and is hereby dismissed with costs to the Plaintiff/Respondent.
13. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**L. KASSAN**

**JUDGE**

In the Presence of:

Murage & Diro for the Plaintiff

Masora holding brief Akwaya for Respondent

Carol – Court Assistant

