



**Nicholas RO t/a Ombija & Ombija Co Advocates v Mburu t/
a Mburu & Co Advocates (Commercial Case E740 of 2021)
[2025] KEHC 1400 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E740 OF 2021
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

**JUSTICE (RTD) NICHOLAS RO T/A OMBIJA & OMBIJA CO
ADVOCATES PLAINTIFF**

AND

JOHN MBAU MBURU T/A MBURU & CO ADVOCATES DEFENDANT

RULING

1. This ruling relates to the Notice of Motion dated 21st December 2021, brought under Order 50 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act*. It seeks the following orders:
 - i. That the Defendant be granted enlargement of time within which to file a witness statement made by Daniel Muchoki Maina Advocate, out of time.
 - ii. That the Defendant be granted leave to file a supplementary witness statement made by himself.
 - iii. That the statement of Daniel Muchoki Maina and the Supplementary witness statement be deemed as duly filed upon payment of the requisite court filing fees.
 - iv. That the Defendant be granted leave to file further lists of witnesses and documents respectively plus a bundle of documents arising from the said statement, and that the same be deemed as duly filed upon payment of the requisite court fees
 - v. That the costs of the application be in the cause.



2. The Notice of Motion is based on the grounds outlined in the Supporting Affidavit sworn by John Mbau Mburu on 1st December 2021. He desposes that while preparing the statement of defense and accompanying documents, he reviewed numerous volumes of documents in a short period, which led to the omission of some key documents. These additional documents are necessary to address these omissions. Furthermore, there is a need to respond to the Plaintiff's claim that he did not instruct counsel to represent him. The additional documents will help the court properly address the real issues in the case and ensure a fair and just decision.
3. The Plaintiff filed a replying affidavit sworn on 24th January 2022, where he outlines the events leading to the filing of the current suit. He contends that the Defendant has already submitted a significant volume of documents in support of his defense, and the introduction of additional documents would only burden both the court and the Plaintiff. Justice (rtd) Ombija further argues that the statement by Daniel Muchoki, which is included in HCCC No. 54 of 2019, is irrelevant to the current suit and constitutes hearsay. He emphasizes the necessity for the parties to streamline their statements and averments to avoid diverging into unnecessary matters. He asserts that the Defendant's excessive duplication of documents appears to be a strategy to complicate the case and prolong the litigation indefinitely.
4. The application was heard through written submissions and oral highlights by the respective counsels. The sole issue for determination is whether the Respondent's Notice of Motion, filed on 21st December 2021, is merited.
5. The Applicant seeks leave to file "additional documents" out of time. Order 50, Rule 6 of the Civil Procedure Rules, as read with Section 95 of the *Civil Procedure Act*, provides for the enlargement of time where a limited time is fixed for doing any act or taking any proceedings. Order 50, Rule 6 of the Civil Procedure Rules provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by Order of the Court, the Court shall have the power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, provided that the costs of any application to extend such time and any order made thereon shall be borne by the parties making such application, unless the Court orders otherwise.”
6. The orders sought by the Defendant/Applicant are purely discretionary and ought to be exercised sparingly. Both parties have extensively presented their arguments for consideration, which I have duly noted. It is well established that in an application for enlargement of time, the primary consideration for the Court is to ensure that justice is served for all parties and to guarantee that the parties are allowed to present their case.
7. The Defendant/Applicant seeks enlargement of time and leave to file additional documents in support of their case. From the record, it is evident that the Defendant has filed voluminous documents in support of their case. The reason given for the delay in filing these documents is that the Defendant had to go through the large volume of materials to extract the relevant documents. While I am not entirely persuaded that this explanation is satisfactory, I am minded of finding of the interest of justice and to afford the Defendant/Applicant a fair hearing as guaranteed under *the Constitution*.



8. Be that as it may, the exercise of the discretion, for the extension and/or enlargement of time must be geared towards achieving a just and legitimate purpose (see Neptune Credit Management Ltd & anor vs Dr. Jigisha P. Jani & Anor (2021) eKLR).
9. In the circumstances, I will allow the Notice of Motion dated 21st December 2021 and make the following orders:
 - a. Time within which the Defendant/Applicant is to file the witness statement made by Daniel Muchoki Maina, Advocate, is hereby enlarged.
 - b. Leave is hereby granted to the Defendant/Applicant to file their supplementary witness statement within 7 days.
 - c. Leave is hereby granted to the Defendant to file further lists of witnesses and bundles of documents within 7 days.
 - d. The Defendant/Respondent's witness statement by Daniel Muchoki, the supplementary affidavit, the further list of witnesses, and the bundle of documents shall be deemed as duly filed upon payment of the requisite court fees.
 - e. The Plaintiff/Respondent is granted leave to file additional documents, if necessary, within 14 days, upon service.
 - f. Mention on 27th March 2025 for directions as to hearing of the main suit.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI

THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Otieno David for Plaintiff/respondent

N/A for Defendant/applicant

Court Assistant: Carlos

