



**Middle East Bank Kenya Limited v Jamwa Consolidated Agencies & 2 others;
Africa Merchant Assurance Co Ltd (Third party) (Civil Suit 149 of 2015)
[2025] KEHC 9224 (KLR) (Commercial and Tax) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 149 OF 2015
FG MUGAMBI, J
JUNE 27, 2025**

BETWEEN

MIDDLE EAST BANK KENYA LIMITED APPLICANT

AND

JAMWA CONSOLIDATED AGENCIES 1ST RESPONDENT

JOSEPH MWAURA KAMAU 2ND RESPONDENT

ANNE NJERI MWAURA 3RD RESPONDENT

AND

AFRICA MERCHANT ASSURANCE CO LTD THIRD PARTY

RULING

Background and introduction

1. The matter before the Court is a part-heard suit in which the plaintiff's witness (PW1) testified on 6th October 2024. Cross-examination was interrupted due to the filing of the present application dated 11th October 2024. The application is brought under Articles 50(1) and 159(2) of the *Constitution*, Sections 1A, 1B, and 3A of the *Civil Procedure Act* and Order 51 of the *Civil Procedure Rules*. The applicant seeks leave to adduce further evidence by introducing Motor Vehicle Pre-auction Valuation Reports.
2. It further seeks consequential leave for the respondents and third party to file additional documents and, if necessary, to cross-examine the applicant's witness on the further list of documents. The



application is opposed through grounds of opposition dated 4th November 2024, filed by the defendants/respondents.

Analysis and Determination

3. I have carefully considered the application, response and submissions on record. The core issue for determination is whether the applicant has laid a sufficient basis to warrant the exercise of this Court's discretion to allow the admission of additional evidence at this advanced stage of the proceedings.
4. It is settled law that the admission of further evidence after commencement of trial is an exception and not the rule. The guiding principles were clearly set out by the Court of Appeal in *Ladd V Marshall*, [1954] 1 WLR 1489 and adopted in numerous Kenyan decisions, including *Wanjie & Others V Sakwa & Others*, [1984] KLR 275, where the Court held that additional evidence will only be allowed if:
 - i. it is shown that the evidence could not have been obtained with reasonable diligence for use at the trial;
 - ii. the evidence is such that, if given, it would probably have an important influence on the result of the case; and
 - iii. the evidence is apparently credible.
5. The Supreme Court in *Mohamed Abdi Mahamud V Ahmed Abdullabi Mobamad & 3 Others*, [2018] eKLR further elaborated that:

“The applicant must satisfy the court that the evidence sought to be adduced could not have been obtained with reasonable diligence prior to trial, is relevant and credible, and is of such weight that it is likely to influence the result of the case.”
6. The applicant confirms that indeed, it was as a result of the cross examination of PW1 that it was jolted into filing the said additional documents, “when the advocate raised the issue of pre-auction processes in relation to Motor vehicle registration numbers KBR 895K and KBR 901K to the plaintiff/applicant”.
7. The applicant claims that the omission of the same was inadvertent, that the documents are material and relevant to its case, that no prejudice would be occasioned to the respondents and that even if there was such prejudice, the same could be compensated. The applicant maintains that it is in the interest of justice and a fair determination of this suit that it be afforded the opportunity to adduce additional evidence in support of its case.
8. The respondents on the other hand maintain that pleadings had closed and pretrial was concluded before the matter was fixed for hearing. Since the matter is part heard, the applicant should not be allowed to circumvent procedural rules by seeking admission of documentary evidence midstream the hearing of the case. The respondents note that the applicant has substantially proceeded with its case and its witness had extensively been cross-examined and this application seeking admission of further evidence was therefore meant to steal a match on the defence and bolster its testimony which was extensively shaken in cross-examination.
9. It is not in dispute that the said valuation reports concern Motor Vehicles whose details were well within the applicant's knowledge prior to the hearing. The applicant has not shown that it exercised any diligence to procure these documents before the hearing began. The explanation offered, which is that the omission was “inadvertent”, does not meet the threshold for admission of late evidence, especially where the matter is already part-heard.



10. The *Civil Procedure Rules* are designed to ensure orderly, fair, and expeditious disposal of cases. Parties are bound by their pleadings and evidence disclosed at pre-trial. To allow parties to continually amend or introduce evidence midstream would undermine the very objective of pre-trial processes and open the door to trial by ambush. The Court in *Trust Bank Limited V Amalo Company Limited*, [2002] eKLR cautioned that:

“Courts should not allow litigants to play fast and loose with the rules of procedure to the detriment of the fair administration of justice.”

11. This matter is already part-heard and has experienced delays. The introduction of new evidence at this juncture will inevitably occasion further delay and disrupt the orderly progression of the trial. As stated by the Court of Appeal in *China Road and Bridge Corporation (Kenya) V Malindi Water & Sewerage Company Limited*, [2021] eKLR:

“A party must not be permitted to litigate in instalments. The overriding objective under Sections 1A and 1B of the *Civil Procedure Act* requires the Court to facilitate just, expeditious, and proportionate resolution of civil disputes.”

12. I am also persuaded by the holding in *Samuel Kiti Lewa V Housing Finance Co. of Kenya Ltd & Another*, [2015] eKLR, where the Court rejected a similar attempt to introduce evidence mid-hearing, observing that litigation must come to an end. The process must be respected and not turned into an unending fishing expedition.

Conclusion

13. In the circumstances, I find that the application is devoid of merit. The applicant was at all times aware of the facts and documents it now seeks to introduce and had ample opportunity to place them before the Court at the appropriate stage. No sufficient or credible explanation has been offered for the delay.
14. Moreover, allowing the application at this stage would only occasion further delay in a matter that has already experienced considerable lapse of time. In my view, the intention of the applicant is to fill gaps in its case, thereby undermining the integrity of the trial process. The Court’s inherent jurisdiction ought not to be invoked to achieve such an end.

Disposition

15. Accordingly, I find no merit in the application dated 11th October 2024. The same is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 27TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

