



REPUBLIC OF KENYA



KENYA LAW
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**KSC International Limited (Under Receivership) & 5 others v Bank
of Africa (Kenya) Limited & 6 others (Commercial Case 446 of 2015)
[2025] KEHC 11586 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 446 OF 2015**

AA VISRAM, J

JULY 31, 2025

BETWEEN

**KSC INTERNATIONAL LIMITED (UNDER RECEIVERSHIP) ... 1ST PLAINTIFF
KUNDAN SINGH UBHI 2ND PLAINTIFF
OPKAR SINGH UBHI 3RD PLAINTIFF
RIPTHUMAN SINGH UBHI 4TH PLAINTIFF
VISTA WINDOWS LIMITED 5TH PLAINTIFF
HIGHLANDS CANNERS LIMITED 6TH PLAINTIFF**

AND

**BANK OF AFRICA (KENYA) LIMITED 1ST DEFENDANT
KENYA COMMERCIAL BANK LIMITED 2ND DEFENDANT
I&M BANK LIMITED 3RD DEFENDANT
KOLLURI VENKATA SABBARAYA KAMASASTRY 4TH DEFENDANT
DELOITTE CONSULTING LIMITED 5TH DEFENDANT
SAMUEL OKETCH ONYANGO 6TH DEFENDANT
HARVEEN GADHOKE 7TH DEFENDANT**



RULING

Introduction and Background

1. The 1st, 2nd, 3rd, and 4th Plaintiffs (“the Plaintiffs”) have brought a Notice of Motion dated 14th February, 2025, seeking leave to reopen their case to adduce new evidence. The Application is supported by affidavits sworn by Opkar Singh Ubhi, the 3rd Plaintiff, on 14th February, 2025 and 19th May, 2025.
2. The Application is opposed. The 1st Defendant has filed a Replying Affidavit sworn on 4th April, 2025, by its Senior Manager, Ben Mwaura. The 2nd Defendant has filed a Replying Affidavit sworn on 9th April, 2025, by its Head Counsel–Litigation, Lilian Sogo.
3. The Plaintiffs seek to introduce two documents: -(i) A letter dated 3rd March, 2020, from the 1st Defendant to Kereto Marima, which they contend reflects a debt figure inconsistent with that previously relied upon to justify receivership; and(ii) A forensic report dated 14th February, 2025, prepared by Brian Forensics LLP, which allegedly demonstrates that the 1st Defendant overstated the 1st Plaintiff’s indebtedness by Kshs. 164,034,375.21/-.
4. The Plaintiffs argue that both pieces of evidence became available only after they had closed their case on 15th November, 2017 and are crucial to the central issue of the validity of the receivership.
5. The 1st Defendant opposes the Application on grounds of inexcusable delay, prejudice to its defence and counterclaim, and that the new evidence introduces matters not pleaded. It argues that allowing the Application would necessitate amendments to pleadings and disrupt the trial.
6. The Plaintiffs counter that no delay occurred since the evidence was unavailable earlier and that any prejudice to the Defendants can be cured by granting leave to amend their pleadings.

Analysis and Determination

7. It is undisputed that the Plaintiffs closed their case in November 2017. The 1st Defendant’s letter was received in March 2020, and the forensic report was prepared in February 2025.
8. While the Civil Procedure Rules do not expressly provide for reopening a case, the Court has inherent power under Section 3A of the *Civil Procedure Act* to do so where justice demands.
9. The guiding principles were set out in *Susan Wavinya Mutavi v Isaac Njoroge & Another* [2020] KEELC 8 (KLR), where the Court, drawing on Commonwealth authorities including *Mohamed Abdi Mohamud v Ahmed Abdullahi Mohamad & Others* (2018) eKLR, *Samuel Kiti Lewa v Housing Finance Company of Kenya Limited & Another* (2015) eKLR, and *Ladd v Marshall* (1954) 3 All ER 745, held that: -

“The discretion to reopen a case must be exercised judiciously to prevent prejudice to the opposite party. It is not available to merely fill evidentiary gaps. An application will fail if brought after inordinate and unexplained delay. The applicant must show that the evidence could not, with reasonable diligence, have been obtained earlier; that the evidence is likely to have an important, though not necessarily decisive, influence on the outcome; and that the evidence is apparently credible.”

7. Applying these principles, I am satisfied that the Plaintiffs could not have produced the letter dated 3rd March, 2020, or the forensic report during their original case. The forensic report was prepared



promptly upon completion, and this Application was filed the same day. I therefore reject the argument of inordinate delay.

8. As regards prejudice, the Defendants have yet to close their case and will have full opportunity to amend their defences, respond to the new evidence, and cross-examine witnesses. Any prejudice is adequately remediable.
9. On whether the new evidence is outside the pleadings, I am persuaded that the evidence directly relates to the pleaded dispute over the debt amount and receivership's validity. It is not materially at variance with the Further Re-Amended Plaintiff.
10. The proposed evidence is credible, relevant, and has potential to materially influence the outcome of the dispute.

Conclusion and Orders

14. In light of the foregoing, I find merit in the Plaintiffs' Application dated 14th February, 2025, and make the following orders: -
 - a. The Plaintiffs are granted leave to reopen their case for the sole purpose of adducing additional evidence as annexed to the 3rd Plaintiff's supporting affidavit.
 - b. The Defendants are granted corresponding leave to amend their pleadings, file additional documents, and witness statements within fourteen (14) days of this ruling if they so choose.
 - c. Costs of the application shall be in the cause.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 31ST DAY OF JULY, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Sakina

.....for 1st Plaintiff
.....for 2nd Plaintiff
.....for 3rd Plaintiff
.....for 4th Plaintiff
.....for 5th Plaintiff
.....for 6th Plaintiff
.....for 1st Defendant
.....for 2nd Defendant
.....for 3rd Defendant
.....for 4th Defendant
.....for 5th Defendant
.....for 6th Defendant



.....for 7th Defendant

