

2. The application is premised on the grounds on the face of it and the further supported by the Affidavit of **Elizabeth Mary Ruguru Muriu** deponed on the 4/4/2025. The Applicant avers that on 10/2/2025, the Court granted parties more time to file their documents by 11/3/2025. She avers that despite her efforts to secure the documents in support of her amended Plaintiff and in response to the Counterclaim she could not obtain them within the time allowed by the Court. That she has now managed to obtain the said documents and therefore seeks to have them filed before the Court to enable her rely on them at trial.
3. The Plaintiff/Applicant argues that the said documents shall assist the Court in the just determination of the suit. That it is in the interest of justice to have the said documents filed out of time, thus enabling her to rely on them during trial. She therefore seeks that the Supplementary List of Documents be deemed as properly filed upon payment of requisite fees and thereafter served upon the Defendant/Respondent herein in time for the Defendant/Respondent to adequately prepare for trial.
4. She argues that no prejudice shall be occasioned to the Defendant/Respondent in any way since it will have a chance to respond to the said documents during cross-examination and the Defendant's case. She urges the Court to grant the orders sought.

The Defendant's Responses

5. The application is vehemently opposed by the Defendant vide her Replying Affidavit and Grounds of Opposition both dated 28/4/2025.
6. In her Grounds of Opposition, the Defendant avers that the application is an abuse of the Court process and ought to be dismissed with costs. She argues that the Applicant is undeserving of the orders sought as no explanation has been stated for the delay and non-filing of the documents by 11/03/2025. That in any event, the application herein was filed almost a month from the said date.
7. She accuses the Plaintiff of deliberately failing to comply with the procedural guidelines in filing claims and suit which should be

accompanied with the list of documents they wish to rely on. She avers that the Plaintiff is only trying to cure the defects in her suit despite having been pending in Court for over 13 years. That the application is intended to delay the hearing of the suit which shall prejudice the Defendant. That in any event, there is no reasonable cause of action raised in the suit. Therefore, the application should be dismissed to put to an end a matter that has been pending in Court for over 13 years.

8. In her Replying Affidavit, the Defendant reiterates the assertions stated in the Grounds of Opposition save to add that the documents being filed are malicious and have been forged to cure the defects in the suit. That the Plaintiff is not keen on prosecuting the suit as the matter has been adjourned numerous times. She contends that the matter has been pending in Court for over 13 years which was sufficient time for the Plaintiff to gather her documents. She argues that the matter went to pretrial and pleadings closed hence the Plaintiff only seeks to contradict the Defendant's assertions in the Defense.
9. The Defendant further avers that the Plaintiff seeks to introduce a new claim and evidence hence the application has not been made in good faith and the same should be dismissed with costs.
10. The Court directed parties to canvass the application by way of written submissions. The Plaintiff/Applicant filed her submissions dated 23/6/2025 whereas the Defendant/Respondent's submissions are dated 25/6/2025. The Court has had the opportunity to read through the filed submissions as well as arguments raised by the parties' counsel in support of their respective positions.

Analysis and Determination

11. Having considered the application beforehand and the responses thereto and upon taking into consideration the written submissions filed by and on behalf of the respective parties, in my view, the only issue for determination is:

Whether the Plaintiff's Application beforehand is merited.

12. It is common ground that the Application seeks to file a Supplementary List of Documents. On 10/2/2025, the Court granted the Defendant to file and serve the Amended Defence within 7 days from the date thereof. The Plaintiff was granted leave to file a Reply to Defence and Defence to Counterclaim, if any within 7 days after service. Parties were thereafter directed to file and serve their paginated trial bundles by close of business on 11/3/2025. The Court further directed that any document filed outside the stated time shall stand expunged.
13. From the record it is evident that the Defendant complied and filed the Counterclaim as well as the Defendant's Witness statement on 14/2/2025. In response thereof, the Plaintiff filed her Reply to Defence on 3/3/2025. The Plaintiff further filed her List of and Bundle of Documents on 11/3/2025. Clearly, all the documents were filed within the timelines issued by the Court. However, the Plaintiff now seeks to file a Supplementary List of Documents.
14. Order 3 Rule 2 of the Civil Procedure Rules stipulates that all suits filed shall be accompanied by copies of documents to be relied on at the trial including a demand letter before action. This ought to be done during the pre-trial stage before the matter has been certified ready for hearing.
15. Article 159(2) of the Constitution mandates Courts to administer justice without undue regard to procedural technicalities. This includes facilitating the right to fair hearing and the right to be heard which are guaranteed under Article 50 thereof. It entails allowing a party, before the hearing starts, to file documents that they intend to rely on during the hearing unless the request is shown to be frivolous or intended to delay the just and expeditious hearing of the suit. (**See Hangover Kaakwacha Hotel Ltd v Philip Adundo & Leonard Adundo t/a Hangover Kaakwacha Hotel [2022] eKLR**).
16. In **Johana Kipkemei Too v Hellen Tum [2014] eKLR**, the Court noted that where additional evidence can be adduced without causing

undue prejudice to the other party, the Court ought to allow the application so as to allow such party to present its case in full.

17. Be that as it may, the parameters to be satisfied before a Court of law can grant extension of time and/or liberty to file documents [witness statement or list of documents] out of time, were highlighted and elaborated by the Supreme Court of Kenya in the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR**, where the Court held thus:
18. From the above case law, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the Applicant. This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:
 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

19. Additionally, the Supreme Court of Kenya also revisited the necessity for an Applicant seeking extension of time to account for the delay in the case of **Nairobi Bottlers versus Mark Ndumia & Another, [Supreme Court 2023] [Ruling] delivered on the 28/12/2023**]; where the Court held thus:

(27) Having so found, we also hold that the Applicant has not offered any explanation for the delay between 17th August, 2023 and 2nd October 2023 when it filed its Motion for extension of time. In **Marvin Opiyo Ambala & another v. Oduor Hawi Ambala & Another, SC Application No. 1 of 2021; [2021] eKLR**, this Court pronounced that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. In the circumstances, the Motion for extension of time lacks merit.

20. Guided by the above, I have looked at the documents sought to be introduced which are composed of bank slips, bank statements, purchase orders, invoices, receipts, loan application form, certificates of registration, development agreement and sale agreement. It is my view that these documents are relevant to the matter.

21. The Defendant asserted the Plaintiff's objective in filing the present application was to delay the hearing of the matter but there is no evidence of this. I note the suit has been severally certified ready for hearing but has not proceeded for one reason or the other. The Plaintiff stated that she obtained the documents on the same date that it filed the present application. Therefore, there is no inordinate delay. In any event, the Defendant filed 2 Witness Statements on 28/4/2025 without leave of Court. The Court shall never the less exercise its discretion and allow the said statements as duly filed.

22. I am not persuaded that by seeking to file the additional documents, the Plaintiff is attempting to steal a match as submitted by the Defendant. The Plaintiff asserted that they were not able to obtain the

documents earlier despite due diligence. I am also not convinced that the admission of the documents will prejudice the Defendant as they will be afforded an opportunity to cross examine the Plaintiff's witnesses on the documents during the trial.

23. Final Orders for Disposal

In the circumstances, I find that the Plaintiff's application dated 4/4/2025 is merited and is allowed in the following terms;

- a. The Applicant is directed to file and serve the documents listed in prayer No a above within the next 7 days.
- b. Upon service I allow corresponding leave to the respondent of 7 days to file any documents in rebuttal.
- c. After which the parties should expediently list the suit for hearing on priority basis.
- d. costs shall be borne by the Applicant in favour of the respondent.
- e. It is so ordered

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF
AUGUST 2025 VIA MICROSOFT TEAMS.**

J. G. KEMEI
JUDGE

Delivered Online in the Presence of:-

- 1. Mrs.Nderitu for the Applicant.**
- 2. Respondent present in person**
- 3. CA - Ms. Yvette**