

UGANDA / JUDGMENT

Malaba Town Council v Ekel Martin (MISC. APPLICATION NO. 15 OF 2025) [2025] UGHC 430 (30 April 2025) [2025] UGHC 430

COURT
High Court of Uganda

BEFORE
Kaweesa, J

CASE / FILE NUMBER
MISC. APPLICATION NO. 15 OF 2025

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGABDA AT TORORO MISC.
APPLICATION NO. 15 OF 2025 [ARISING FROM CIVIL SUIT NO. 032 OF 2022]**

**MALABA TOWN COUNCIL:.....APPLICANT VERSUS
EKEL MARTIN:.....RESPONDENT**

RULING

BEFORE: HON. DR. JUSTICE HENRY I KAWESA

The Applicant filed this application seeking orders that this Honourable Court recalls Ochwo Ochieng Ojomoko for further cross examination in Court in Civil Suit No. 32/2022 arising from Civil Suit No. 15/2015 The facts supporting this application are stated in the affidavit sworn in support by Omella Isaac Aseu. The main gist of this application is that this witness testified for the Respondent as a Property Valuation Surveyor and was gross examined.

However, he never attached his registration and practicing certificate to his Witnesses statement and Counsel for the Applicant forgot to ask him in cross examination to adduce evidence of the same. The Applicant's argument is that when a search was carried out on his Registration status with the Surveyors Registration Board his name was not found on the list. Counsel therefore argued that, it is important that the witness be recalled for further cross examination to clarify on his registration status and to furnish the Registration and Practicing certificate. She stated that the grant of the application will not occasion any injustice to the Respondent.

wo issues we are set forth for consideration

- 1. Whether this honourable Court should recall Ochwo Ochieng Ojomoko for further cross examination.
- 2. What remedies are available to the parties.

RESOLUTION

1. Whether this Honourable Court should recall Ochwo Ochieng Ojomoko for further cross examination.

On this issue reference was made to **Order 18 R.13 of the Civil Procedure Rules** which is to the effect that "the Court may at any stage of the suit recall any witness who has been examined and may subject to the law of evidence for the time being in force put such questions to him or her as the Court thinks fit"

Counsel referred to the case of **Tolit Charles Okiro V Otto Cipriano HCCS NO.002/2019** which discusses grounds upon which Court may grant leave to a party to re-open its case.

- i) "Where fresh evidence unavailable or not reasonably discoverable before, becomes known and available.
- ii) Where there has been inadvertent error.
- iii) Where there has been a mistaken apprehension of facts.
- iv) Where there has been a mistaken apprehension of the law.

Court further stated that the overriding principle is that the Court considers whether taken as a whole the Justice of the case favours the grant of leave to reopen and any prejudice in reopening the case should be minimal.

The other considerations the Court should take into account include the reason why the evidence was not timeously, the degree of materiality of the evidence, the possibility that it might have been shaped, the balance of prejudice, the stage that the litigation had reached, the general need for finality in judicial proceedings and the appropriateness of visiting the advocates remissness on the head of his client."

Whereas I agree with the positions above as the proper position of the law I find the rest of the arguments raised irrelevant as they relate to the efficacy of the Plaintiff's case as regards the cogency of this witness 'evidence in Court. I will not go into their detailed discussion but I will accord them due consideration at the final stage of evaluating all the evidence on record as a whole while making the final Judgment.

On the other hand, in response to the Applicants' Counsel's submissions for the Respondent drew the Court's attention to the case law espoused in the case of *Kuringe Real Estates versus NMB Bank PLC (TZ HC CD 104 of 2023*) which was referred also by Counsel for the Applicant. This case sets out the principles which Court should apply in a case of this nature before recalling a witness for cross examination. These are that:

- 1. Court should not permit recalling of a witness for the sole purpose of filling up gaps in a case of a particular party when all procedures regulating a particular trial have been exhausted.
- 2. Where, recalling of a witness would cause prejudice to the opposite party the permission should be refused
- 3. When a move for recalling a particular witness is considered to be an abuse of Court process the request for recalling a witness has to be refused. This is normally practiced by those who for one reason or the other would not wish to witness timely conclusion of trials in the Court.

It was argued for the Respondent that applying the principles above to this application would be prejudicial to the Respondent. Referring to the affidavit in reply under paragraph 8 and 9 it was argued that the

application if granted would be prejudicial since the case is at the verge of conclusion and has been ongoing for the last 10 years. He argued that it has been brought in bad faith as the Applicant does not wish to have timely conclusion of the matter. This is especially as the witness that is to be recalled filed the witness statement for over a period of over a year and Counsel for the Applicant's lawyer had ample time to prepare for the cross examination of the witness and they indeed completed the cross examination. This application is therefore an afterthought intended to delay the conclusion of the main suit and should therefore be rejected.

I agree with the above arguments because the witness that is sought to be recalled was in Court, filed a witness statement, Counsel had ample time to study the statement and indeed cross-examined that witness on his evidence. As pointed out by case law referred to above the recall should not be used to cover up a party's case. As I have pointed out earlier, the justification for calling this witness is that he did not attach his practicing

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certificate. If that be the case that is a point to be argued in final submissions.

I do not see how the defense at this stage wants a witness to reopen his case and admit a document alleged to be in his possession which does not form part of his own evidence. The justification that the lawyer forgot to ask this question is not sufficient cause to move this Court to exercise its discretion so as to recall this Witness.

I find that this application is brought in the bad faith and is prejudicial to the Respondents as argued. I decline to grant the application and find that it fails on both grounds.

The application is dismissed with costs

Dr. Henry I. Kawesa JUDGE 30/04/2025

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