



**Nuguti v Nuguti & another (Environment & Land Case  
42 of 1993) [2023] KEELC 18207 (KLR) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18207 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 42 OF 1993**

**M SILA, J  
JUNE 14, 2023**

**BETWEEN**

**DORICA NDEGE NUGUTI ..... PLAINTIFF**

**AND**

**NATHANIEL OKERO NUGUTI ..... 1<sup>ST</sup> DEFENDANT**

**HELLEN NYANCHERA OMWANZA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application before me is that dated 23 December 2022 filed by the plaintiff. She seeks the following orders :-
  - a. That this honourable court be pleased to enlarge time within which to execute the consent judgment dated 27 August 1993.
  - b. That costs of this application be provided for.
2. The application is opposed.
3. The background is that through a plaint filed on January 20, 1993, the applicant averred to be the legal wife of the 1<sup>st</sup> defendant/respondent. She claimed that the 2<sup>nd</sup> defendant/respondent was another woman cohabiting with the 1<sup>st</sup> respondent. She averred that during their marriage, the 1<sup>st</sup> respondent and herself, jointly acquired various properties which she listed. She sought orders that the 2<sup>nd</sup> respondent has no right over these properties. The 2<sup>nd</sup> respondent filed defence and contended to have been married by the 1<sup>st</sup> respondent in the year 1985 and the applicant was thus her co-wife. The 1<sup>st</sup> respondent also filed a defence along the same lines asserting that the 2<sup>nd</sup> respondent was also his wife and that he had five children with her.



4. The dispute was settled through a consent recorded on August 27, 1993. The order was as follows:-

It is agreed and ordered by consent that the 2<sup>nd</sup> defendant is recognized by the plaintiff as properly married 2<sup>nd</sup> wife of her (plaintiff's) husband, the 1<sup>st</sup> defendant.

The 1<sup>st</sup> defendant to divide his property as agreed by the parties between his above two houses as follows:-

1. Land parcel No Matutu Scheme/59 be shared between the two houses so that the plaintiff gets 10 acres thereof with 3500 tea bushes and the 2<sup>nd</sup> defendant gets 7.5 acres with the remaining approx 3500 tea bushes in it.
2. The parcel No Nyaribari Masaba/Kiamokama/837 be divided between the two houses in such a way that the plaintiff gets 0.36 Ha. and the 2<sup>nd</sup> defendant gets 0.35 Ha. in it.

The Land Registrar and the Surveyor to survey and subdivide the above two parcels No 59 and 837 as hereinabove stated, fix the boundaries, give new numbers and register in the respective names. The costs of the said exercise to be borne by the two houses equally.

3. The parcel No. Nyaribari Chache/B/B/Boburia/1351 be solely for the plaintiff.

It is to be noted that the 1<sup>st</sup> defendant has obtained a loan from Kenya Commercial Bank Ltd, Sotik Branch on the security of the said parcel No. 1351. It be repaid by the plaintiff who should be registered as the sole owner thereof upon repayment of the said loan. The 1<sup>st</sup> defendant is hereby ordered not to transfer the said parcel to anyone other than the plaintiff and not to enter into any transaction relating to the said parcel from now onwards.

4. Plot No 130 at Keroka market to be the sole property of the 2<sup>nd</sup> defendant and it be transferred to her.
5. Plot No 4003 at Nyansiongo Market be the sole property of the plaintiff and it be transferred to her.
6. Plot No 11 'B' Nyabasibi Market and whatever share the 1<sup>st</sup> defendant has in Plot No 33 at Matutu Market are hereby declared to be solely for the 2<sup>nd</sup> defendant, Hellen.
7. It is declared that the plaintiff to have no interest in the m/vehicles Reg No KTY 220, Peugeot 404 pick-up. It be solely for the two defendants. The 1<sup>st</sup> defendant to pay Kshs 10,000/= to the plaintiff in full settlement for the said m/vehicle on or before January 3, 1994.
8. The plaintiff to give away two cows to the 2<sup>nd</sup> defendant on or before September 5, 1993.

Should any party neglect to execute any document for transfers referred to hereinabove the same be executed by the E O of this court.

The Land Registrar to remove the caution placed on parcel No Matutu Scheme/59 forthwith to effect the above transfers of the said parcel.

No order for costs.



V.V. Patel, Judge,

27 August 1993.

5. In this application, the applicant states as follows regarding the above consent :-
- i. That the 1<sup>st</sup> respondent subdivided LR No Matutu Settlement Scheme/59 into two (namely No 383 and 384) as agreed and transferred parcel No 384 to the 2<sup>nd</sup> respondent but did not transfer parcel No 383 to her as agreed.
  - ii. That the 1<sup>st</sup> respondent did not subdivide and transfer the parcel Kisii/Nyaribari Masaba/Kiamokama/837 as agreed though the defendants and the plaintiff later agreed that the said parcel of land to be wholly transferred to the plaintiff.
  - iii. That the 1<sup>st</sup> respondent has not complied with paragraph 3 of the consent judgment though he (1<sup>st</sup> respondent) has complied with paragraphs 4, 5 and 6 of the consent judgment.
  - iv. That she is not claiming from the 1<sup>st</sup> respondent the said Kshs 10,000/- mentioned in paragraph 7 of the consent judgment though the 1<sup>st</sup> respondent did not pay the same.
  - v. That the applicant has complied fully with paragraph 8 of the consent judgment.
  - vi. That the applicant has requested the 1<sup>st</sup> respondent to comply with the consent but the 1<sup>st</sup> respondent kept promising to comply but has not done so to date.
  - vii. That she did not foresee that she will be caught up with lapse of time.
  - viii. That she did not deliberately neglect to apply for the executive officer of this court to execute the necessary transfer documents but it is because the 1<sup>st</sup> respondent misled her by assuring her that he was going to deal and there was no cause for alarm.
6. The 2<sup>nd</sup> defendant/respondent filed grounds of opposition and a replying affidavit to oppose the motion. In the grounds of opposition, it is contended inter alia, that even if the application was meritorious, it has been caught up by the *Limitation of Actions Act*, Cap 22, Laws of Kenya. In the replying affidavit, the 2<sup>nd</sup> respondent has deposed that the applicant is guilty of non-disclosure for failing to disclose that she filed the suit Nyamira CMCC No 201 of 2017. She states that the 1<sup>st</sup> respondent has been ailing for a long time and she has never been allowed to visit him. She denies that the consent has not been satisfied but contends that it is the applicant who is not satisfied. She also complains that the applicant has not transferred to her some titles, tea and a posho mill.
7. The applicant filed a supplementary affidavit. I have not seen anything particularly new in that affidavit save that some documents are annexed and she claims to have fully paid the loan under which the property Nyaribari Chache/B/B/Boburia/3531 was charged and that she holds the original title deed and discharge of charge. On the suit Nyamira CMCC No 201 of 2017, she points out that the 2<sup>nd</sup> respondent has attached no document in relation to that suit.
8. I invited counsel to file written submissions, but I have only seen the submissions of counsel for the applicant. I have gone through the same. In his submissions, Mr Nyariki, learned counsel for the applicants, has acknowledged that the 12 year period for execution of a judgment has lapsed and that there is need to enlarge time to enable the applicant apply to implement the judgment.



9. The limitation period of a judgment is provided for in Section 4 (4) of the [Limitation of Actions Act](#) which is drawn as follows :

(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

10. In the case of [M'Ikiara M'Rinkanya & Another vs Gilbert Kabeere M'Mbijiwe](#) (2007) eKLR, the Court of Appeal interpreted the word 'action' to also mean execution of the judgment.

11. The judgment herein is one of August 27, 1993 and twelve years lapsed on August 27, 2005. It is now about 18 years since the judgment was caught up by time. The order that the applicant seeks is to enlarge time within which to execute this judgment in the acknowledgment that it has already been caught up by time. But does this court have the jurisdiction to enlarge time?

12. In his submissions, Mr Nyariki, learned counsel for the applicant, did not refer me to any law which permits this court to extend the limitation period prescribed in Section 4 (4) of the [Limitation of Actions Act](#). He also did not refer me to any authority to support the prayer for extension of time. My research informs me that this court has no powers to extend the time provided in Section 4 (4) of the [Limitation of Actions Act](#). In the case of [Willis Ochieng Onditi vs Gateway Insurance](#) (2014) eKLR the Court of Appeal was emphatic that the court has no jurisdiction to extend the time for executing a decree.

13. The facts of the case were that, in 1994, the appellant filed suit in the Kisumu Chief Magistrate's Court seeking damages out of injuries sustained in a road traffic accident. He was awarded the sum of Kshs 271,600/= on 26 August 1996. The decree was not executed within 12 years. In 2009, he filed another suit at the Magistrate's Court for declaratory orders to have the respondent satisfy the decree. This 2009 suit was struck out as being time barred. What the appellant did, in the year 2011, was to file an Originating Summons before the High Court at Kisumu, seeking leave to file suit out of time against the respondent so as to have the decree of 1994 satisfied. The High Court granted the extension of time as prayed on October 17, 2011. Pursuant to that leave, the appellant filed a suit at Winam Principal Magistrate's Court seeking the declaratory orders that he had asked for in the suit that was dismissed in 2009 for being out of time. The respondent moved the High Court to have the order of October 17, 2011 set aside and for a further order that the new suit filed in the Winam court was time barred. The court allowed the application and set aside its orders of October 17, 2011. It concluded that it had no jurisdiction to extend time for filing suit as had been sought. Aggrieved, the appellant moved to the Court of Appeal. The Court of Appeal had this to say :

The appellant moved the High Court by his Originating Summons filed on 19th September, 2011 for leave to file suit out of time under the provisions of Sections 27 and 29 of the [Limitation of Actions Act](#). Section 29 is of no relevance in this appeal. Under Section 27, as can be gleaned from the provisions cited above, time to file suit can only be extended where the action is found on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed should be in respect of personal injuries to the plaintiff as a result of the tort. The section clearly does not give jurisdiction to the court to extend time for filing suit in cases involving execution of decrees. In the matter before us, it matters not that the original suit was founded on the tort of negligence and damages claimed were



in respect of personal injuries as a result of the tort of negligence. Here, the extension was sought to enforce a judgment and/or decree. Time within which to lodge such action cannot be extended under the provisions of Section 27 of the *Limitation of Actions Act*. Accordingly, H.K. Chemitei, J. had no jurisdiction to extend time as he purportedly did on 17th October, 2011. We are therefore not at all surprised that the learned Judge reviewed that order by setting it aside...” (emphasis mine).

14. It will be seen from the above decision that the Court of Appeal clarified that there is no jurisdiction to extend time to enforce a judgment or decree. It matters not that the dispute here involves family. The court would still not have the jurisdiction to do what the applicant is asking this court to do, for the law does not allow for it.
15. The long and short of it is that there is no merit in this application and it is hereby dismissed. On costs, I observe that the parties had earlier agreed in their consent that there be no orders as to costs. However, this application was clearly frivolous and I will dismiss it with costs. The costs are assessed at Kshs 15,000/= to the respondents.
16. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 14 DAY OF JUNE 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**\_\_AT KISII\_\_**

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