



**Kanampiu (suing as legal representative of the estate of the late kiberenge Njuri the deceased on behalf of Beatrice Kiberenge) v Rucha & another (Miscellaneous Case E021 of 2022) [2022] KEELC 14652 (KLR) (9 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14652 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**  
**MISCELLANEOUS CASE E021 OF 2022**  
**CK YANO, J**  
**NOVEMBER 9, 2022**

**BETWEEN**

**NJAGI KANAMPIU ..... EXPARTE APPLICANT**

**SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE  
KIBERENGE NJURI THE DECEASED ON BEHALF OF BEATRICE  
KIBERENGE**

**AND**

**ASHFORD KBURU RUCHA ..... 1<sup>ST</sup> RESPONDENT**

**MARY AMATU DAVID NTANG'I (BEING SUED AS THE  
LEGAL REPRESENTATIVE OF THE ESTATE OF FRED NCHAILE  
(DECEASED) ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Ex-parte Applicant herein moved the Honourable court by way of an ex-parte chamber summons dated November 7, 2022 which is expressed to be brought under Order 37 Rule 6 of the [Civil Procedure Rules](#) and sections 26, 27 and 28 of the [Limitation of Actions Act](#) and all other provisions of the Law. The Applicant has sought the following orders:
  1. That this application be certified urgent and to be heard urgently and ex-parte orders issue in regard to prayer II.
  2. That this Honourable court be pleased to grant the Applicant leave to file an ELC suit out of time against the Respondents.
  3. That costs for this Application be provided for.



2. The application is supported by the affidavit of Njagi Kanampiu sworn on November 7, 2022. The applicant's case is that he needs to file a suit for recovery of land parcel No. Mwimbi/kiraro/701 whose time limitation has lapsed. That the Applicant has been prevented by facts beyond his control from filing the suit in time among them being that his aunt (now deceased) had initially filed CMELC Case No. E048 of 2022 which was dismissed since she had not sought leave to file suit out of time. That the foregoing facts were outside the knowledge of the applicant and that the Respondents through fraud, illegally transferred the parcel of land to themselves and the deceased instituted suit to revert the land back to her name. That the intended suit is genuine and has high probability of success. That it is unfortunate that the deceased passed on before justice was served and the parcel of land revert back to her husband's name, Kiberenge Njuri.
3. The applicant states that it is unfortunate that the former advocate failed to seek leave to file suit out of time and that it is in the interest of justice that the Applicant be allowed to file the suit out of time. That no prejudice will be occasioned to the Respondents herein since they will be accorded an opportunity to defend themselves, adding that the application has been brought without inordinate delay.
4. The applicant has annexed copies of a limited grant, Green card for land parcel No. Mwimbi/kiraro/701, documents from Runyenjes Law Court and the Judgment in Chuka Criminal Case No. 1707 of 2004.
5. The applicant avers that his deceased aunt passed on before filing this application by following the laid down procedures and that her body is still lying in a morgue since the Respondents rushed to court and barred the relatives of the deceased from laying her to rest where she had lived since time immemorial upto the time of her demise. That the claim which is weighty is time barred, hence the filing of this application.
6. The court has duly considered the application and the affidavit in support, together with the annexures thereto. The power to extend time is discretionary and not fettered at all, save that the said power should be exercised judiciously and upon defined principles of law.
7. The court has noted the reason for the delay in filing the suit and the explanation given by the applicant which in my view is plausible. From the material presented, it is clear that the circumstances were beyond the control of the applicant. Courts of justice should strive to determine disputes on merit rather than dismiss them especially where justice would still be done and a fair trial had, despite the delay. In my view, the Respondents will not suffer any prejudice if the application herein is allowed as they will be accorded an opportunity to defend themselves.
8. In the premises, the application herein is allowed. The applicant is granted leave to file suit out of time. The suit to be filed within fourteen (14) days from the date hereof.
9. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 9TH DAY OF NOVEMBER, 2022 IN THE PRESENCE OF:**

**CA: MARTHA**

N/A for Applicant

N/A for Respondents

**C. K. YANO,**

**JUDGE.**

