



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Wangui & 4 others (Environment & Land Case
39 of 2020) [2025] KEELC 3670 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 39 OF 2020**

JM ONYANGO, J

MAY 7, 2025

BETWEEN

TERESIA WAMBUI NJUGUNA PLAINTIFF

AND

EMMA WANGARI WANGUI 1ST DEFENDANT

JOSEPH KINYANJUI MUTHONI 2ND DEFENDANT

JOYCE MUTHONI WAITHAKA 3RD DEFENDANT

THIKA DISTRICT LAND REGISTRY 4TH DEFENDANT

KENYA COMMERCIAL BANK LIMITED 5TH DEFENDANT

RULING

1. This ruling determines the 2nd Defendant's application dated 4.12.2024 seeking leave to file his Defence, List of Documents and Witness Statements. The application is anchored on the Applicant's Supporting Affidavit sworn on the 4th day of December 2024 in which he deposes that he was incarcerated in August 2021 and released on 3rd May 2023 and that is why he was unable to file his defence in time. He adds that he came to realize that the 3rd Defendant had filed a Notice of claim for Kshs. 12,000,000 against him and if the matter proceeds as it is, he will be condemned unheard.
2. The application is opposed by the 1st defendant through her Replying affidavit sworn on 11th December 2024i which she deposes that the 2nd defendant has all along been aware of this suit as he filed a Replying affidavit to the Plaintiff's application for injunction and he should have filed his Defence at that time. She further avers that there is nothing to show that the Applicant was incarcerated and that even if that is the case, he has had ample time to file his Defence as he was released in May 2023.



Analysis and Determination

3. I have considered the application, Replying Affidavit and rival submissions. The only issue for determination is whether the 2nd Defendant should be granted leave to file his Defence, List of Documents and Witness statements out of time.

4. The power to enlarge time is governed by Order 50 Rule 5 of the Civil Procedure Rules which provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Provided that the costs of the application to enlarge time and of any order made thereon shall be borne by the parties making such application unless the court orders otherwise.”

5. Additionally, the right to a fair hearing encapsulated under Article 50 of *the Constitution* presupposes that every person be afforded adequate time to prepare their case or defence.

6. Article 159 (2) of *the Constitution* of Kenya also enjoins the court to do justice to all, irrespective of status.

7. The principles that should guide the court in considering an application for enlargement of time were laid down by the Supreme Court in the case of Nicholas Kiptoo Arap Salat v IEBC & 7 Others (2014) eKLR, where it was held that:

“... 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.

“... we derive the following as the underlying principles that a Court should consider in exercising 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 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. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
 5. whether there will be any prejudice suffered by the respondents, if extension is granted”;
8. The Court therefore has a wide discretion to enlarge time within which to file documents. That discretionary power is exercised so as to do justice to the case. However, the said discretion must be exercised judicially and with prudence and not whimsically.



9. I have examined the reasons given for the delay in filing the Defence and accompanying documents. The Applicant has explained that he was incarcerated from 2021 upto May 2023 and although he has not attached any document, I note from the proceedings that it had been brought to the court's attention that he was in prison. Infact, the court had on various occasions issued a production order to facilitate the 2nd Defendant's attendance during the hearing of the case although it appears he was not able to attend court.
10. Although this matter has been fixed for hearing on several occasions, I note that for one reason or another, it has failed to proceed and therefore no serious prejudice will be occasioned to the parties. I am therefore of the considered view that in the interest of justice, the 2nd Defendant ought to be allowed to file his Defence, List of Documents and witness Statements.
11. Accordingly, the application has merit and I grant it and make the following orders:
 - a. The 2nd Defendant shall file and serve his defence, List and bundle of documents and witness statements within 14 days. The same should be contained in a bound and paginated trial bundle.
 - b. The Plaintiff and 1st defendant shall file their replies to the Defence if any, together with any additional documents within 14 days after service.
 - c. The costs of the application shall be borne by the Applicant.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF MAY 2025.

.....
J. M ONYANGO

JUDGE

In the presence of:

Mr Sausi for the Plaintiff

Mr Mwaura for the 1st Defendant /Respondent

Mr. Waweru Nyambura for the Applicant

. Mrs Mangua for the 3rd Defendant

Court Assistant: Hinga

