



REPUBLIC OF KENYA



**Njango & another v Kinuthia & another (Environment and Land  
Case E177 of 2024) [2025] KEELC 5269 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5269 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E177 OF 2024**

**JA MOGENI, J**

**JULY 7, 2025**

**BETWEEN**

**ELIZABETH NJANGO ..... 1<sup>ST</sup> PLAINTIFF**

**SIMON MBOCHA KINYATI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PETER THANDE KINUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**JOHN KARIUKI MBUGUA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Applicants seek this Court’s intervention to allow them file a Replying Affidavit out of time and that the honorable Court arrests the delivery of its Ruling scheduled for 7/07/2025 and admits the Replying Affidavit on record dated 3/04/2025 out of time.
2. The Application is brought under Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 9 Rules 9 (a) and 10, Order 22 Rule 22(1) and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling laws.
3. The Application is unopposed.
4. The background of the Application is that the Plaintiffs in this matter filed a Notice of Motion Application dated 18/10/2024 seeking injunctive orders against the Applicants and served the Defendants at their residence while they were away on business for six (6) months and so they were unaware of the proceedings.
5. That when the matter was mentioned in Court on 17/02/2025 the Court gave directions for all parties to file submissions within 14 days and a Ruling date was reserved for 7/07/2025. The Applicants did not know about the Application dated 18/10/2024 since they were not served or rather the documents were served at a premise they were not operating from for six (6) months.



6. It is for this reason that the Applicants have filed the instant Application seeking a chance to file a Replying Affidavit to the Application and since they claim to have a triable defence with high probability of success.
7. The Court directed the parties to file and exchange brief submissions. At the time of writing this Ruling none of the parties had filed their submissions.
8. Every party has a right to access any Court or Tribunal to have its dispute heard and determined in accordance with Article 50(1) of *the Constitution* of Kenya, 2010. Even where a party delays in doing an act, there is always a provision that would give it reprieve to seek justice.
9. Notably, Order 50 Rule 6 of Civil Procedure Rules, 2010 empowers the Court to enlarge the time to do a particular act. The said Order 50 Rule 6 of Civil Procedure Rules stipulates 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 any Application to extend such time and of any order made thereon shall be borne by the parties making such Application, unless the Court orders otherwise.”

10. While considering whether or not to grant an order for extension to do any act, the Court was also required to consider if the opposing side would suffer any prejudice if extension of time was granted. This Court did not see any prejudice that the Respondent would suffer or was likely to suffer if the Applicants herein exercised their constitutional right to be heard by filing the Replying Affidavit out of time. If there was any prejudice, the Court is not able to know or address it since the Respondents did file any response to the Application.
11. Taking all the factors hereinabove into account, it was the considered view of this Court that it was in the interests of justice (emphasis Court) that the Applicants be given an opportunity to have their Replying Affidavit admitted on record after paying the requisite fees to enable them participate and canvass the Plaintiffs’ Application dated 18/10/2024. They should also be heard on merit as they would suffer prejudice if they were denied an opportunity to fully present their response to the Application and to be heard on merit.
12. Indeed, the power to grant orders in the interest of justice and/or for the ends of justice (emphasis Court) is well captured in Section 3A of the *Civil Procedure Act* that states:-

“Nothing in the Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice (emphasis Court) or to prevent abuse of the process of the Court.”

### **Disposition**

13. For the foregoing reasons, the upshot of this Court’s decision is that Notice of Motion Application dated 3/04/2025 is merited and the same be and is hereby allowed in terms of Prayer No (3) and (4) therein on the following conditions:-
  - i. That the Court arrests the scheduled delivery of this Court’s Ruling on 07/07/2025.



- ii. The Replying Affidavit dated 3/04/2025 filed out of time is admitted on record upon the Applicants paying the requisite fees. Thereafter the Applicants are to serve the Replying Affidavit upon the Plaintiffs not later than 7 days from the date hereof.
- iii. The cost of this Application to be borne by the Applicants.
- iv. The Plaintiffs are directed to file their submissions to the Notice of Motion Application dated 18/10/2024 and serve the Respondents within 14 days of this Ruling and the Defendants upon service have corresponding leave to file their responses.
- v. Mention to take a Ruling date shall be on 2/10/2025.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7<sup>TH</sup> DAY OF JULY 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

In the presence of:

Ms. Mong'are for the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs/Respondents

Ms. Ndung'u for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants

Mr. Melita – Court Assistant

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**MOGENI J**

**JUDGE**

