



Muita & 3 others v Nderitu & 4 others (Environment and Land Case 556 of 2014) [2025] KEELC 6079 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6079 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE 556 OF 2014
JO OLOLA, J
SEPTEMBER 19, 2025**

BETWEEN

**NICHOLAS NDERITU MUITA 1ST PLAINTIFF
MARY NYAMBURA NDERITU 2ND PLAINTIFF
DR JOSEPH MAINA NDERITU 3RD PLAINTIFF
PETER MWANGI NDERITU 4TH PLAINTIFF**

AND

**JOHNSON GITHAIGA NDERITU 1ST DEFENDANT
EUNICE NEKESA MUITA (AS THE PERSONAL REPRESENTATIVE OF THE
ESTATE OF PETER MUITA NDERITU - DECEASED) 2ND DEFENDANT
ESTHER NJOKI MUIGAI 3RD DEFENDANT
FRANCIS MATHENGE NDERITU 4TH DEFENDANT
SAMUEL NDIRANGU NDERITU 5TH DEFENDANT**

RULING

1. I have before me two applications for determination. The first application is the Notice of Motion dated 2nd April, 2024 as filed by the Plaintiffs. By the said Motion the Plaintiffs pray for the following orders.
 1. Spent
 2. Spent
 3. Spent



4. That this Honorable Court be pleased to review, vary and/or set aside part of the judgment delivered on 25th January, 2024 to the extent that the court directed the re-subdivision of the suit land LR Nyeri/Gatarakwa/897, to allow parties follow the due process of the law of succession to pursue their rightful entitlement of the suit land;
 5. That in the alternative, this Honorable Court be pleased to grant leave to the Plaintiffs/Applicants to lodge a Notice of Appeal against the Judgment delivered on 25th January 2024 out of time;
 6. That the draft Notice of Appeal annexed hereto be deemed as properly filed and served upon the Defendants/Respondents upon payment of the requisite court fees;
 7. That the Honorable Court may be pleased to grant an order for stay of execution of the Judgment of the Honorable Court delivered on 25th January, 2024 and all consequential orders flowing therefrom pending the lodgment, hearing and determination of the Plaintiff's/Applicant's intended Appeal; and
 8. That the costs of the application be in the cause.
2. The application which is supported by an affidavit sworn by Dr. Joshua Maina Nderitu (the 3rd Plaintiff) is premised on the grounds inter alia:
- a. That in its judgment delivered on 25th January 2025, the court found in favour of the Plaintiffs but directed that the suit land be re-subdivided and allocating only 24 acres to the 2nd Plaintiff/Applicant and her family;
 - b. That the Plaintiff had in their prayers not sought for the re-subdivision of the suit land as they had contemplated subsequent succession proceedings and neither had the Defendants lodged a Counterclaim seeking an order for re-subdivision of the suit land;
 - c. That the Defendants have moved unilaterally and with haste, to have a sub-division scheme prepared without involving the Plaintiffs and without regard to the actual occupation of the Suitland by the Plaintiffs;
 - d. That the Plaintiffs are greatly prejudiced in their rights of actual occupation and use of the Suitland including the developments thereon which extend to an area larger than the 24 acres declared in the judgment without jurisdiction and without due process of the law;
 - e. That based on evidence which was not available and/or necessary due to the nature of the pleadings before the court, the Plaintiffs are entitled to an order for review of the order for re-subdivision of the Suitland;
 - f. That in the alternative, the Plaintiffs being dissatisfied with the order directing the re-subdivision of the Suitland intend to appeal to the Court of Appeal against that order;
 - g. That although a Notice of Appeal ought to have been lodged within 14 days of delivery of the judgment, such Notice was not filed within the stipulated time; and
 - h. That the intended Appeal is meritorious with a high probability of success as it raises serious and arguable factual, evidentiary and legal issues for determination by the Court.
3. The Defendants are opposed to the application. By their Grounds of Opposition dated 21st May, 2024, the Defendants assert that:

SUBPARAGRAPH 1.



- The application does not meet the threshold for review of judgment;
2. The intended appeal, if any may have no chances of success based on the deponed grounds;
 3. No hardship will be suffered by the Applicants in the circumstances of the case; and
 4. The application is otherwise an afterthought and an abuse of the court process.
4. The second application before the Court has been filed by the Defendants. By their Notice of Motion dated 29th April, 2024, the Defendants pray for Orders as follows:
1. Spent
 2. That (the) Land Registrar and Surveyor be given security by the OSC (sic) Nairutia Police Station to enable them to sub-divide Nyeri/Gatarakwa 1897 in accordance with the wishes of the deceased as per the court order dated 25.1.2024 boundaries between the beneficiaries mentioned therein pending and determination of this application (sic);
 3. That the 3rd Respondent/Plaintiff named Dr. Joseph Maina Nderitu and his agents one G. Wachira Maranga be restrained from intermeddling with land known as Nyeri/Gatarakwa/897;
 4. The Applicants and all beneficiaries be allowed to be included in this process and the Respondents herein as this facts (sic) were wishes of the deceased and according to court order as follows:
 - a. 1 acre be in the name of Nicholas Nderitu Muita
 - b. 35 acres in the name of Francis Mathenge Nderitu.
 - c. 35 acres in the name of Johnson Githaiga Nderitu.
 - d. 35 acres in the name of Peter Muita Nderitu.
 - e. 24 acres be in the name of Mary Nyambura Nderitu and her children; and
 5. The costs of this application be in cause.
5. By the First Application, the Plaintiffs prays for an order of review of the judgment delivered on 25th January 2024 to the extent that this court directed that the parcel of land known as Nyeri/Gatarakwa/897 be re-subdivided. In the alternative, the Plaintiffs have urged the court to be pleased to grant them leave to lodge a Notice of Appeal against the said judgment out of time. In addition, the Plaintiffs pray for an order of stay of execution of the judgment and all consequential orders flowing therefrom pending the lodgment, hearing and determination of the said intended Appeal.
6. It is the Plaintiffs' case that while the court found in their favour, the court erroneously directed that the Suitland be re-subdivided and thereby allocated only 24 acres of the same to the 2nd Plaintiff and her family. The Plaintiffs assert that neither themselves nor the Defendants had sought an order for the re-subdivision of the Suitland as they contemplated that the rest of the issues not sought in their claim would be dealt with via subsequent succession proceedings.
7. The Plaintiffs accuse the Defendants of subsequently moving in haste to unilaterally have a sub-division scheme prepared for the land without regard to their actual occupation of the land which extends beyond the 24 acres allocated to them in the judgment.



8. In Republic –vs- Cabinet Secretary for Interior and Co-ordination of National Government Ex-Parte Abdulahi Said Salad (2019) eKLR, the Court cited the case of National Bank of Kenya Ltd –vs- Ndungu Njau (1996) KLR 469 (CAK) wherein it was held as follows:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

9. Similarly, in Multichoice (Kenya) Ltd –vs- Wananchi Group (Kenya) Ltd & 2 Others (2020) eKLR, the Court of Appeal held thus:

“It bears emphasizing that the phrase “mistake or error apparent” by its very connotation conveys the fact that the error envisaged is one which is evident per se from the record and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. It is prima-facie visible. It must relate to an error of inadvertence, one which strikes one on merely looking at the record...”

10. In the matter before me the Plaintiffs have asserted that it was erroneous for the court to declare that the parcel of land known as Nyeri/Gatarakwa/897 be re-subdivided as the same fell within the jurisdiction of the succession court. The basis of the application is summarized at Paragraph 12 and 13 of the Affidavit of Dr. Joshua Maina Nderitu wherein the 3rd Plaintiff avers as follows:

“12. That during the trial, because we intended to have the issue of succession dealt with separately, in the Amended Plaint dated 12th February, 2018, and in previous pleadings, no prayer was sought for an order of re-subdivision and as such, no evidence about the actual occupation was led as it was not necessary or relevant at that stage; and

13. That for the above reason, it was not fair or just for the court to have based the order for re-subdivision of the Suitland LR. No. Nyeri/Gatarakwa/897 on the consent dated 26th September, 2006 as the same did not reflect how the Suitland was and is currently utilized with the blessings of our late father and which has always been hotly disputed.”

11. With respect I did not think that those were grounds upon which a court can exercise the power of review. The fact that the Plaintiffs consider the court to have overstepped its mandate can only be a ground for appeal but not one for review as sought herein. By their application, herein the Plaintiffs are urging the court to replace its judgment on record with another one. This court has already made its decision on the facts presented before it and it cannot now sit on its own judgment and make a different decision.

12. It follows that I was not persuaded that the application for review had any merit.

13. In the alternative, the Plaintiffs have urged the court to be pleased to grant them leave to lodge a Notice of Appeal out of time. As the Supreme Court of Kenya stated in County Executive of Kisumu –vs- County Government of Kisumu and 8 Others (2017) eKLR (Civil Application No. 3 of 2016);



- a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
14. In support of the prayer for extension of time, the 3rd Plaintiff asserts as follows at paragraph 15 of the Supporting Affidavit:
- “ 15. That although as advised by the Advocates on record for the Plaintiffs, which advise I verily believe to be true, that a Notice of Appeal ought to have (been) filed within fourteen (14) days of the date of delivery of Judgment, such Notice was not filed within the stipulated time as we intended to obtain the evidence of utilization first on the basis of (which) we now seek review, failing which we are still keen on pursuing an appeal against the said part of the judgment. Annexed hereto is the Notice of Appeal marked “MWI 3.”
15. I was not persuaded that the above amounted to a sufficient explanation of the delay of more than two months in filing this application. The court’s discretion to extend time can only be exercised on sound grounds. Delay of even a single day should be reasonably accounted for otherwise there would be no need of having rules prescribing periods within which certain steps ought to be taken.
16. On their part and by their Notice of Motion dated 29th April, 2024, the Defendants have urged the court to order that the Land Registrar and the Surveyor be given security by the Police to enable them sub-divide the parcel of land known as Nyeri/Gatarakwa/897 in accordance with the wishes of the deceased and as per the decree issued by the Court. They also urge the court to restrain the 3rd Plaintiff from what they term as intermeddling with the suit property.
17. While the Defendant’s application could have been better and more clearly drafted, it was apparent to me that all that the Defendants are seeking is to execute the decree of this court by being facilitated to sub-divide the Suitland as ordered by the court.
18. From a perusal of the material placed before the court, it was evident that following the delivery of the judgment on 25th January, 2024, the Plaintiffs’ Advocates on record applied for the issuance of the decree on the same day. On 31st January, 2024, the said Advocates forwarded a draft decree to the Defendants’ Advocates on record for approval. That approval was given on 2nd February, 2024 and a decree was subsequently issued on 6th February, 2024.
19. It was also apparent that shortly thereafter the parties engaged a surveyor to effect the sub-division of the land but the process came to a halt after the parties disagreed on certain aspects of the exercise.



Having considered the amount of time this matter has taken in court, I think it is only fair that the same be concluded expeditiously in the manner proposed by the Defendants.

20. In the circumstances herein, I did not find any merit in the Plaintiffs' Notice of Motion dated 2nd April 2024. I dismiss the same in its entirety. On the other hand, the court is satisfied that there is merit in the Defendant's Notice of Motion dated 29th April, 2024. I allow the same in terms of prayers No. 2 and 3 thereof.

21. Given the nature of the relationship between the parties herein I make no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Mugambi Advocate for the Plaintiffs
- c. No Appearance for the Defendants

