



**Ndungu v Karanja & another (Environment & Land Case  
E077 of 2024) [2024] KEELC 6671 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6671 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E077 OF 2024**

**MD MWANGI, J**

**JULY 11, 2024**

**BETWEEN**

**GEORGE MWAURA NDUNGU ..... PLAINTIFF**

**AND**

**PETER NGUGI KARANJA ..... 1<sup>ST</sup> DEFENDANT**

**PETER NDUNG’U ..... 2<sup>ND</sup> DEFENDANT**

*(In respect to the 1st Defendant’s application dated 17th April, 2024 seeking leave to file a replying affidavit to the Plaintiff’s application dated 27th February 2024)*

**RULING**

**Background**

1. The 1<sup>st</sup> Defendant in his application dated 17<sup>th</sup> April, 2024 seeks leave to file a replying affidavit to the Plaintiff’s application dated 27<sup>th</sup> February, 2023, out of time. The 1<sup>st</sup> Defendant explains that the Court had directed him on 14<sup>th</sup> March, 2024, to file his response to the Plaintiff’s application within 14 days but he did not manage to comply after he was unable to trace some documents he deemed crucial within the time given by the Court. He has filed a draft replying affidavit that he wishes to rely on in opposing the Plaintiff’s application dated 27<sup>th</sup> February, 2024. He avers that his application is made in good faith and that it is in the interest of justice that his application be allowed.
2. I do note that the application is not opposed by the Plaintiff. No submissions too were filed in respect to the application.

**Issues for Determination.**

3. The sole issue for determination is whether the 1<sup>st</sup> Defendant is entitled to an order of extension of time as sought in the application.



## **Analysis and Determination.**

4. The Supreme Court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* (2014) eKLR, laid down the general principles to be considered by a Court in determining whether or not to extend time limited by the rules or by a decision of the Court. The Court stated that;

“... It is clear that the discretion of the Court to extend time is indeed unfettered. It is incumbent upon the application to explain the reasons for the delay in making the application for the 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;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time”
5. Considering this application against the above laid down principles, I am persuaded that the 1<sup>st</sup> Defendant has laid a basis for the grant of the extension of time within which to file the replying affidavit. The explanation offered as the cause for the delay is reasonable. Further, the application has been brought without unreasonable delay and I do not see the prejudice that will be suffered by the Plaintiff if the application is allowed.
6. Consequently, I allow the 1<sup>st</sup> Defendant’s application and grant him 7days from the date of this ruling to file and serve a replying affidavit to the Plaintiff’s application dated February 27, 2023.
7. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF JULY 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kuria for the Plaintiff

Ms. Nyanchera for the 1<sup>st</sup> Defendant



N/A for the 2<sup>nd</sup> Defendant

Court Assistant: Yvette.

**M.D. MWANGI**

**JUDGE**

