



**Nyambura v Mwangi & 3 others (Environment & Land Case
E082 of 2023) [2025] KEELC 4882 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E082 OF 2023**

**JG KEMEI, J
JUNE 30, 2025**

BETWEEN

PETER NDERI NYAMBURA PLAINTIFF

AND

STEPHEN MWAURA MWANGI 1ST RESPONDENT

MBUI KIMANI 2ND RESPONDENT

EXPEDITER NOM 3RD RESPONDENT

CHIEF LAND REGISTRAR 4TH RESPONDENT

RULING

1. Vide the application dated the 21/3/25 the Applicant sought for the following orders;
 - a. Leave to file and introduce additional evidence being a surveyors Report as part of the applicant's evidence
 - b. Costs of the application be provided for
2. The application is based on the grounds on the face of it and the supporting affidavit of Peter Nderi Nyambura sworn on the 21/3/25 wherein he avowed that the delay in filing the additional document was beyond his control since the Registry file was unavailable but was only traced recently enabling the report to be prepared albeit late. That the report is crucial for the fair and just determination of the case and that no prejudice will be occasioned on the part of the respondents.
3. The application is not opposed by the 1st, 3-4th Respondents.
4. The 2nd Respondent opposed the application vide the Replying Affidavit sworn on 14/4/25 where he deponed that the suit was certified ready for hearing on the 26/3/25 upon all the parties, the Applicant included, confirming that they had complied with the provisions of Order 11 of the Civil Procedure



Rules and that allowing the application is tantamount to reopening the suit, a cause of action that will further delay the hearing of the matter. That the Applicant was motivated to look for this additional piece of evidence in response to his defence and counterclaim. Additionally, that no good reasons have been advanced for the late filing of the document and urged the court to dismiss the application with costs.

Directions

5. Directions were taken in which the parties elected to file written submissions. I have read and considered the submissions of the Applicant dated the 25/4/25. There are no submissions filed on behalf of the 2nd respondent.

Analysis and Determination

6. Having considered the application, the grounds upon it is premised the replying affidavit and the submissions on record the key issue that falls for determination is whether the application has merit.
7. This suit was filed vide a plaint dated the 15/9/2023 and almost two and half years later it is yet to be heard. This courts practice directions are that a suit ought to be heard within a period of 360 days following its filing. Had the directions been complied with this suit ought to have been heard and concluded by September 2024. As fate would have it is still traversing/navigating the contours of the corridors of justice. I have perused the file and the record is explicit that the hearing of the suit has been delayed for one reason or another due to non-compliance with the provisions of Order 11 by the parties.
8. The relevant provision relating to the filing of witness statements is traced to Order 3 rule 2 CPR which states that;

“All suits filed under rule 1(1) including suits against the government, except small claims, shall be accompanied by—

- (a) the affidavit referred to under Order 4 rule1(2);
- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses excluding expert witnesses; and
- (d) copies of documents to be relied on at the trial including a demand letter before action:

Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.”

9. It is apparent from the above procedure that the Applicant ought to have filed this document in compliance with the provisions of the above order or at the very latest before the conclusion of the pretrial conference.
10. Order 95 of the *Civil Procedure Act* empowers the court to enlarge time even though the period originally fixed may have lapsed. It states as follows;

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.



11. It is trite that extension of time is a discretionary exercise of Court's powers. Such discretion must be exercised judiciously and not whimsically. See the case of Mbogo & another v Shah [1968] 1 EA 93. This court being a neutral arbiter and also a shrine of justice, has a mandate to do justice to all parties and not to be too strictly bound by procedural technicalities and strictures.
12. Back to the application at hand, the Applicant submits that the registry file was unavailable. There was no evidence in support of this averment in form of correspondences between the Applicant and the registry (whichever the registry is). There is also no evidence from the said registry that the file was unavailable. It is not enough for the Applicant to make averments which are unsupported before the court.
13. It has been averred by the Applicant that the surveyors report is crucial for the just determination of the suit. Save for the statement, there was no foundation laid in support of this statement. I have however perused the claims of the parties and it would appear that there are competing interests in the suit land. The Applicant's land reference number and that of the 2nd Respondent appear similar save for the survey and title numbers. Perhaps one of the questions for determination before the court will be who is the owner of the suit land and whether the titles are duplicated on the ground or not. Parties bear the onus to produce evidence in support of their competing interests.
14. The 2nd Respondent has urged the court to dismiss the application since pretrial closed and there is no reason advanced by the Applicant for not filing the documents timeously. The Court agrees with the 2nd Respondent that there is delay in complying with the pretrial directions as ordered by the Court. I have perused the file and it is clear that the Applicant sought for more time to comply and the Court graciously accommodated him with no avail. The question in my mind is whether this court can still do justice to the parties despite the apparent delay.
15. Given the competing interests of the claims before the court and that the hearing is yet to commence, I would allow the application in the best interest of justice.
16. Orders for Disposal
 - a. The application is allowed with costs payable by the Applicant.
 - b. The Applicant is directed to serve the survey report forthwith and upon service the respondents will be at liberty to file further documents in rejoinder within a period of 45 days from the date of this Ruling.
 - c. The Parties to take expedient steps to list the matter for hearing forthwith.
17. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JUNE 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Mr. Ikuu for the Applicants

N/A for the 1st Respondent

Mr. Gatumuta for the 2nd Respondent



Mr. Otieno for the 3rd Respondent

N/A for the 4th Respondent

CA- Ms. Yvette Njoroge

