



County Government of Kirinyaga v Kimata (Environment and Land Miscellaneous Application E015 of 2023) [2025] KEELC 4583 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2023
JM MUTUNGI, J
JUNE 19, 2025**

**BETWEEN
COUNTY GOVERNMENT OF KIRINYAGA APPLICANT
AND
JACKSON NDIRANGU KIMATA RESPONDENT**

RULING

1. The Applicant, county Government of Kirinyaga filed the Notice of Motion application dated 21st November 2023 seeking the following substantive orders:-
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to grant the Applicant leave to Appeal out of time against the Judgment of Hon. N. M. Kiriba - Senior Resident Magistrate in Kerugoya Principal Magistrate's Court CC No. 282 of 2001 delivered and given on 15th November, 2002 and Decree issued on 11th December, 2002.
 - d. This Honourable Court be pleased to grant stay of execution of the Judgment delivered on 15th November, 2002 and decree issued on 11th December, 2002 by Hon. N. M. Kiriba- Senior Resident Magistrate in Kerugoya Principal Magistrate Court CC No. 282 of 2001 *Jackson Ndirangu Kimata –vs- Kirinyaga County Council* pending the hearing and determination of the Intended Appeal.
 - e. The costs of this application be provided for.
2. The application was premised on the grounds set out on the body of the application and the Supporting Affidavit of Rev. Samuel Kanjobe, the County Executive Committee Member (CECM) for Lands, Housing and Urban Development sworn on 24th October, 2023. The Applicant's



explanation for the delay in lodging the Appeal was that there was delay in the completion of the process of transfer of assets and liabilities of the defunct local authorities to the County Governments by the Transition Authority and lack of the appropriate report from the Inter Government Technical Relations Committee. The Applicant averred that due to non-completion of the transfer process of assets and liabilities the Applicant lacked a proper inventory or record of the assets and liabilities and that in regard to Court matters, the Applicant relied on perusing Court records to ascertain the status of the various Court cases involving the defunct Local Authorities. The Applicant averred that one such matter was the present suit where the then Advocates on record omitted to lodge an Appeal.

3. The Applicant avers that Judgment in Kerugoya PMCC No. 282 of 2001 was delivered on 15th November 2002 and states the Judgment was prejudicial to the interests of the Applicant and the public at large as the land the subject matter of the suit has various amenities which include Government facilities and Government staff houses. The Applicant avers that the suit property Mwerua/Kagio/291 had been lawfully acquired from the original owner by the defunct County Council and the owner was compensated through allocation of alternative land parcel Kirinyaga/Gathigiriri Adj:Sec.425. The Applicant avers though the original proprietor of land parcel Mwerua/Baricho/291 was registered as owner of land parcel Kirinyaga/Gathigiriri/425 (the compensated land) he did not formalise the transfer of land parcel Mwerua/Baricho/291 to the Applicant's predecessor and instead the land was transferred as "GIFT" to the Respondent.
4. The Applicant contends the Judgment rendered by the Learned Magistrate in the matter did not comply with the mandatory provisions of the then Order XX Rule 4 (present Order 21 Rule 4) of the *Civil Procedure Rules* as relates to the structure and content of the Judgment and further that the Decree extracted was not in conformity with the Judgment. The Applicant in the premises avers they have a good Appeal with reasonable chances of succeeding and pray to be granted leave to lodge the Appeal out of time. The Applicant states upon the compensation/exchange with the original owner, the defunct Council took possession and occupation of the suit land, subdivided the same into plots which were allocated to individual persons, developed Government facilities and that the unallocated portion was earmarked for the development of a stadium.
5. The Respondent filed a Replying Affidavit in opposition to the Applicants application. The Respondent averred that there was inordinate delay on the part of the Applicant in bringing the instant application after nearly 21 years since the delivery of the Judgment on 15th November, 2002. The Respondent averred the delay in filing the Appeal could not be justified as the Applicant's predecessor fully participated in the hearing before the Lower Court and after the Judgment was delivered filed an application to review the Judgment dated 22nd October 2003 which was heard and dismissed on 24th August 2004. The Respondent avers that the Applicant never took any further action and has given no explanation for the in action from 2004 upto 2012 when the Transitional Authority was established and took over the functions of the defunct local authorities.
6. The Respondent argues the matters deponed to in the Supporting Affidavit of Rev. Samuel Kanjobe have no relevance as they had no bearing to the suit before the Lower Court. The Respondent further argued the Applicant has no arguable Appeal and that it would be prejudicial to the Respondent if the leave sought is granted.
7. Though the Court directed that the application be argued by way of Written Submissions, the Applicant despite being afforded ample opportunity to do so, did not file any submissions as at 7th April 2025 when the Court reserved the Ruling for delivery on 19th June 2025. The Respondent filed his submissions dated 19th February 2025.



8. The Respondent in his filed submissions has contended that the Applicant having exercised its option to seek a Review of the impugned Judgment delivered on 15th November 2002 cannot at the same time seek to Appeal against the same Judgment. That is a fundamental issue which, if it is determined in favour of the Respondent would render the instant application incompetent and an abuse of the Court process. It is a fact that by the Notice of Motion dated 22nd October 2003 brought under the then Order XLIV Rule 1(1) and 4(1) of the Civil Procedure Rules (current Order 45 Rule 1(1) and 4(1) of the Civil Procedure Rules 2010) and Section 80 of the Civil Procedure Act, Cap 21 Laws of Kenya the Applicant under prayer 3 and 4 in the application prayed as follows:-

3). That the Judgment and decree given on the 15th November, 2002 be and is hereby reviewed and set aside.

4). That there be an order that the case be re-heard.

9. The Learned Trial Magistrate in a Ruling given on 14th August 2004 while acknowledging the Judgment delivered was a one liner as follows:- “Judgment entered for the Plaintiff against the Defendant” and did not comply with the mandatory provisions of Order 20 Rule 4, he decreed that his hands were tied as he could not annul the Judgment as he could not exercise Appellate jurisdiction over a Judgment, as that was within the province of the High Court. The Learned Magistrate in the Ruling inter alia stated thus:-

“-----Review orders applies only where the Judgment of the Court will not be substantially be affected. In this case, if I allowed the prayers sought, there will be no review but a total dislodge of the so called Judgment to which I believe will amount to exercising appellate powers over my Learned Magistrate’s Judgment. This is not a case for review but a case for declaring the whole Judgment a nullity which is the work of the High court. Since I had made my position clear on that issue in my Ruling above stated, I will not change my position. I do advice the Applicant to appeal to the High Court and let the High Court order a retrial.”

10. In an earlier Ruling dated 4th September 2003 on record, the Learned Magistrate declined to issue orders of eviction against occupants in the suit property on the basis that they were not parties to the suit. In the Ruling the Magistrate stated as follows:-

“ However, I do find that people now intended to be evicted are strangers to this suit. There is a Church and several buildings which were in existence even before the Plaintiff purchased the alleged land. It will defeat the ends of justice if we were to order innocent people evicted and their houses demolished. Why were they not joined? They cannot be said to be agents or assigns of the Council because they were allocated land to which they were issued ownership and therefore not answerable to the Council. The Judgment can only be enforced against the Council but unfortunately when the Council was sued it had no land from which to be evicted from. The Judgment herein therefore is of no consequence in so far as implementation is concerned.”

11. I have made extensive reference to the Lower Court record to illustrate there is concern as concerns the Judgment sought to be appealed against. There are issues whether indeed there was a valid Judgment. Courts exist for the purposes of fostering Justice amongst parties who come before them.

12. The Court has unfettered discretion to enlarge time under the provisions of Order 50 Rule 6 of the Civil Procedure Rules which provides as follows:-



- (6) 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.
13. While an Applicant for extension of time ought to give reasons for the delay other factors also cannot be ignored and indeed each case ought to be considered on its own peculiar circumstances to inform the exercise of discretion. In the instant case there is no doubt that there has been a long delay but as I have observed even the Learned Magistrate who handled the matter post Judgment, had issues with the impugned Judgment and even advised the Applicant to prefer an Appeal. There were concerns whether the Judgment was valid and/or not valid and what its terms were and the basis. I believe these are issues that could be clarified by an Appellate Court which is under the Law obligated to re evaluate the evidence adduced before the Lower Court to ascertain that the Judgment was justified.
14. In the instant matter the Applicant is a public body and the Appeal raises issues of public interest and concern. The defunct Local Authority unfortunately appears to have handled the matter too casually which gave rise to the delay and the consequent quagmire the allottees of the Council of Plots within the suit land find themselves in.
15. Taking cognisance of all the circumstances I exercise my discretion in the interest of Justice, and extend time for the Applicant to file and serve a Memorandum of Appeal within 30 days from the date of this Ruling. The Applicant shall pay the Respondent costs for the application assessed at Kshs 15,000/- within the same period of Thirty (30) days failing which the application shall stand dismissed without any further reference to the Court.

Orders accordingly

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 19TH DAY OF JUNE 2025.

J. M. MUTUNGI

ELC - JUDGE

