



**Malindi Residents Development Group & another v County Government of Kilifi & 4 others
(Environment & Land Petition 6 of 2022) [2025] KEELC 4430 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4430 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 6 OF 2022
FM NJOROGE, J
JUNE 13, 2025**

BETWEEN

MALINDI RESIDENTS DEVELOPMENT GROUP 1ST PETITIONER

PROGRESS WELFARE ASSOCIATION OF MALINDI 2ND PETITIONER

AND

THE COUNTY GOVERNMENT OF KILIFI 1ST RESPONDENT

**KILIFI COUNTY CECM FOR WATER, ENVIRONMENT AND NATURAL
RESOURCES 2ND RESPONDENT**

**KILIFI COUNTY CECM FOR LANDS, ENERGY, HOUSING, PHYSICAL
PLANNING & URBAN DEVELOPMENT 3RD RESPONDENT**

THE BOARD OF MUNICIPAL COUNCIL OF MALINDI 4TH RESPONDENT

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 5TH
RESPONDENT**

RULING

1. On the 28/2/2025, the Applicants filed a Notice of Motion dated 27/2/2025 under Order 45 Rule 1, 51 Rule 1 of the Civil procedure Rules, Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Article 50 (1) and 159 (2) of *the Constitution* and all other enabling provisions of the law. In it they sought the following orders;
 1. Spent.
 2. That pending the hearing and determination of this application inter partes, this honourable court be pleased to review its orders directing that the hearing of the matter has been closed and a judgment in the current petition would be delivered on 4/3/2025.



3. That the honourable court be pleased to arrest judgment in the current petition slated for 4/3/2025 pending the hearing and determination of the application inter partes.
 4. That the honourable court be pleased to grant leave to the Applicants to file the attached replying affidavit and the same be deemed as regularly filed.
 5. That this honourable court be pleased to issue further orders that shall meet the ends of justice.
 6. Costs of this application be provided for.
2. The Applicants have based their application on the grounds attached and on a supporting affidavit sworn by Henry Faraji Chipinde where he deposed that he is the 1st Applicant's County Solicitor. He stated that failure by the Applicants to file a response in time was occasioned by a delay in obtaining information from the client department; that the Applicants have been in active engagement with the Petitioners, with regard to compliance with the issue in this petition, and that the Applicants are in the process of filing a supplementary affidavit to give the progress report. He exhibited a copy of the replying affidavit they wish adopted and deemed as duly filed, and asserted that no prejudice will be occasioned to the Petitioners if the orders sought are granted. The deponent added that the Petition is a matter of public interest and has serious ramifications on the part of the residents of Kilifi County. In addition, the Applicants filed a supplementary affidavit sworn on 3/4/2025 by Lennox Mwangolo.
 3. In a replying affidavit sworn on 4/4/2025 by the Petitioners' advocate, Chesoli Dennis Chebayi, the Petitioners opposed the application. Counsel deposed that the Applicants have continued to dump and burn waste in total disregard of the pending suit and the Petitioners' rights to a clean environment. He added the application is only a gimmick designed to forestall the delivery of judgment and that there is no reason to arrest the judgment. To him, the Applicants' conduct has been reprehensive and indolent to warrant the court exercise discretion in their favour.
 4. The application was canvassed by way of written submissions.

Applicants' submissions.

5. Quoting the case of Philip Chemwolo & another v Augustine Kubende (1982-88) KAR 103 and the Court Of Appeal in Murai v Wainaina (1982) KLR 38 where the court emphasized on the right to be heard despite a blunder having been made by a party, and the right to be heard as was discussed in Richard Nchapai Leiyangu v IEBC & 2 Others [2013] eKLR and in Republic v Public Procurement Administrative Review Board & 2 Others [2018] eKLR, counsel submitted that judgment should be arrested as the Applicants' replying affidavits raise triable issues.
6. On whether granting leave to file the response to the petition would be prejudicial to the Petitioners, counsel submitted that the Applicants have a prima facie case that touches on *the Constitution* and that the Applicants would suffer a significant irreparable harm if the application is not allowed. To support his argument, counsel relied on the cases of Philip Chemwolo & another v Augustine Kubede (supra); Morris & Company Limited v Victoria Minerals & Chemicals Limited & another [2007] eKLR; Tree Shade Motors Limited v D.T Dobie & Another (1995-1998) EA 317 (CAK); and Job Kilach v Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono [2015] eKLR.

Petitioners' Submissions.

7. Counsel for the Petitioners argued that a party complaining that they have been denied the right to a fair hearing under Article 50 of *the Constitution* ought to be reminded that a balance has to be struck between the plaintiff's right to have its case heard expeditiously and the Defendant's right to put across



its defence; that a party which has been afforded the opportunity to file their defence and fails to take advantage of that opportunity, cannot later complain that it was denied a right to a fair hearing.

8. Counsel added that the application as filed is not based on any statutory provision and should thus be dismissed. To support this argument, he relied on the case of *Kapeen (Suing as the legal administrator of the estate of John Lemuta Naiguran (deceased)) v Asanyo & 2 Others; Nkoimo (interested party)* [2023] eKLR.
9. Further citing the case of *Peter K. Waweru v Republic; Misc Civil App. No. 118 of 2004* [2006] eKLR, counsel argued that the role of litigation in realizing environmental justice is enhanced by measures such as allowing every person access to justice through public interest litigation by assigning courts special roles in protecting environmental rights.
10. Counsel added that there is no new and important matter or evidence that the Applicants have presented that can alter the court's decision; and that there is no evidence of a mistake or error on the face of the record or any other reason warranting the arrest of judgment. Regarding the issue of costs, counsel referred the court to Section 27 of the *Civil Procedure Act* and the case of *Hussein Janmohamed & Sons v Twentshe Overseas Trading Co. Ltd* [1967] EA 287.

ANALYSIS AND DETERMINATION.

11. This application is brought under Order 45 rule 1 of the Civil Procedure Rules which provides as follows: -

“ Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay.”

12. The Applicants have urged the Court to review its orders directing that the hearing of the matter had been closed and a judgement in the current suit would be delivered on the 4/3/2025. Notably during the pendency of the present application that date of judgment has not passed.
13. This suit was instituted by way of a petition dated 4/2/2022 and filed on 11/2/2022. The Petitioners sought amongst other orders a declaration that their right to a clean and healthy environment has been violated by the Applicants. In response thereof, the Applicants filed a notice of preliminary objection challenging the court's jurisdiction. The Preliminary Objection was subsequently dismissed on 24/11/2023. On 10/6/2024, the court issued directions that the petition be canvassed by way of written submissions. However, on 8/10/2024, the court noted that the petition involves delicate environmental matters and that the Respondents were yet to file their responses. The Court re-opened the proceedings allowing the Respondents to put in their responses within 21 days from that date. The matter was mentioned on 10/12/2024 to confirm compliance with the court's directions. The court noted that there was no appearance on the part of the Respondents and that they had equally not filed



their responses and submissions. The court closed the Respondents' case and reserved judgment for 4/3/2025. Three days to the judgment date, the Respondents/Applicants filed the present application to arrest judgment, and review its orders of 10/12/2024.

14. The first issue is whether the orders given on 10/12/2024 should be reviewed. Order 45 rule 1 stated above is clear that an order may be reviewed where an applicant demonstrates that there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
15. The Applicants in the present matter averred that the failure to file their response was occasioned by delay in obtaining information from the client departments. With all due respect to counsel for the Applicants, this does not amount to discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made; neither does it amount to a mistake or error apparent on the face of the record. It is not sufficient reason to warrant this court to review its order. I say so because the departments are within and are part of the governance structure of the 1st respondent and, further, no reason was given as to why there was the alleged delay in obtaining information from the said client departments. It was also not explained who those client departments were in the first place. The Applicants had over 2 years to file their responses but opted to sleep on their right, despite being granted a second opportunity to do so by this court. The Applicants were at all material times aware of the pendency of the Petition and what was all along expected of them. I am of the view that no reasons have been advanced to warrant review of the orders reserving the judgment for the 4/3/2025.
16. It is to be noted that the Court has not delivered any judgement in this case. It is also clear that environmental litigation has taken a front row in the range of various current climate action initiatives geared at securing survival of the human race in the face of environmental degradation and climate change. Also, my understanding of Order 45 is that the court may review its orders on any other sufficient ground. Reopening proceedings to accommodate a party only delays the hearing of a case, though in the end justice shall be done. In this court's view and without appearing to condone intentional or negligent delay of court proceedings, the panacea for delayed justice is an appropriate award for costs. Also, the fact that the respondent is and will remain, as long as the devolution structure remains in place, a critical participant in environmental matters needs not be gainsaid. Indeed, for the reason that constant engagement between environment sector stakeholders and also that extirpation of silo mentality is crucial if the environment is to be protected, the claim that the respondents have been trying to have dialogue with the petitioners ought to be investigated for all its worth in order to establish whether the respondents have taken a more serious stance in environmental litigation, different from the lackadaisical attitude it exhibited in the past in this case and in other litigation regarding the same dumpsite where they never filed any documents at all. However, this indulgence comes at a price. It is clear that justice will be delayed in this case as the court accommodates the respondents, not because they merit that indulgence, but because the suit involves matters crucial to the life and wellbeing of the petitioners' members.
17. In the end this court issues the following orders in the disposition of the application dated 27/2/2025
 - a. The date of scheduled judgment being 4/3/2025 and now being past, this court will accommodate the Applicants and decline to issue any date of judgment for the next 60 days' subject to compliance with the orders below;



- b. The order made by this court on 10/12/2024 marking the Applicant's respective cases as closed is hereby vacated;
- c. The Applicants shall file and serve their respective replying affidavits in respect of the petition within 21 days of this order.
- d. The petitioners shall have leave to respond to the said replying affidavits within 21 days of being served;
- e. The Applicants have inconvenienced the two petitioners and shall pay Kshs 100,000/- to each the petitioners being punitive costs for the present application which sums shall be payable to the petitioners within 60 days of this order in default of which the orders in (a), (b) and (c) will lapse and if any documents have been filed in respect of (c) and (d) herein above they shall stand struck out and the matter shall proceed to judgment on the basis of the existing record before they were filed;
- f. The matter shall be mentioned on 29th October 2025 for confirmation of compliance by all parties and for issuance of further directions.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 13TH DAY OF JUNE 2025.

MWANGI NJOROGI

JUDGE, ELC, MALINDI.

