



REPUBLIC OF KENYA



KENYA LAW
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**Mulla v Malik & 13 others (Environment & Land Case
31 of 2012) [2025] KEELC 4451 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4451 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 31 OF 2012**

FM NJOROGE, J

JUNE 13, 2025

BETWEEN

YAHYA MOHAMED ALI MULLA PLAINTIFF

AND

ABDUL MALIK & 13 OTHERS DEFENDANT

RULING

1. The Notice of Motion Application dated 13/2/2025 is the one before this court for determination. It has been brought under Order 9 Rule 9, Section 1A, 1B, 3, 3A and Section 63 (C) (E) of the Civil Procedure Act and the Civil Procedure Rules Cap 21 Laws of Kenya, And Article 50 of the Constitution of Kenya. The Applicant prays for the following orders:
 - a. That this application be certified urgent;
 - b. That the firm of Ogero Ogeto & Company Advocates be granted leave to come on record for the all defendants in place of Kiarie Kariuki & Co Advocates;
 - c. That pending the hearing and determination of this application, the court be pleased to stay, vary and review its orders issued on 1st December 2024;
 - d. That the defendants be given unconditional leave/opportunity to file and serve the Record of Appeal;
 - e. Costs be in the cause.
2. The application is based on the following grounds, verbatim:
 - a. That our advocate who was conducting this matter on our behalf did not file a record of appeal within 21 days as per the court order/ruling and as a result of not doing so time elapsed on 22nd December, 2024;



- b. That we lost communication between us and our advocate;
 - c. That on 12th February, 2025 we went to peruse the court file and that is when we discovered the record of appeal had not been filed within the stipulated period and warrants had been prepared and are waiting for signature and execution;
 - d. That we now humbly request this court not to punish us for mistakes committed by our advocate;
 - e. That we have always had an advocate on record and we were not able to supervise him that we believed our advocate as an officer of this court will abide by the court order by filing the record of appeal within 21 days which he did not do;
 - f. That our intended appeal will be rendered nugatory if execution is carried out;
 - g. That we have come to this court with clean hands and now we have a new advocate on record and the record of appeal will be filed within the required period/time which may be ordered by the court;
 - h. That we once again request this Honourable Court to indulge us and review No. 2 of its orders issued/given on 1st day of December, 2024 and give us more time to file and serve the record of appeal upon the respondent;
 - i. That to be more precise the stay orders elapsed on 22nd December, 2024 and we are humbly requesting this Honourable Court to reinstate the stay orders.
3. The plaintiff filed grounds of opposition stating as follows, verbatim:
- a. That the application is misconceived incompetent and otherwise and abuse of the court process and ought to be dismissed;
 - b. That the application is incompetent and fatally defective since the order being sought to be reviewed is not attached to the application as required by law and the rules of procedures strongly suggesting they are on a fishing expedition;
 - c. That the applicants are clearly guilty of abusing the process of the court through dilatory conduct involving the filing of a multiplicity of applications and causes without diligence there by needlessly dissipating the court's time and undeserving to benefit from the discretion of the court;
 - d. The applicants have not shown to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within their knowledge or could not be produced at the time when the order to be reviewed was made or show that there was a mistake or error apparent on the face of the record or for any other sufficient reason for the court to exercise its discretion;
 - e. The Notice of Motion dated 13th of February 2025 does not meet the threshold for an order of review and thus devoid of married the grounds being raised in the present application are not novel and should be dismissed;
 - f. That the Defendants/applicants are on a mission of delay tactics to block the plaintiff/ respondent from enjoying his rightful fruits of the judgment;
 - g. That any other grounds or reasons to be adduced at a hearing of the application.



4. On 29th April 2025 Mr Ogeto for the defendant applicant indicated that he would rely on the application and supporting affidavit only. He did not file any submissions. Ms. Chepkwony filed submissions on behalf of the plaintiff. I hereby grant prayer number 1 on the application so as to lay a basis to consider the other prayers on the strength that it is Mr. Ogeto who will be representing the applicants. However, I have perused through the court record and I have not found any order made on the 1st December 2024 in respect of this matter. There is there for nothing to consider under prayer number 3.
5. In respect of prayer number 4 the same seeks unconditional leave to file and serve the record of appeal. I do not see the basis on which that order is being sought since there is no annexure showing that there was any grant by the court of 21 days to the applicant to file a record of appeal.
6. The omissions of the applicant to provide any supporting exhibits and the corresponding absence of documents or court records to corroborate the claims in the application renders the application incomprehensible and I hereby dismiss it with costs.

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

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

