



REPUBLIC OF KENYA



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Saleh & 3 others v National Land Commission & 2 others; Ministry of Tourism and Wildlife & 7 others (Interested Parties) (note) (Environment & Land Petition E32 of 2021 & Petition E33 of 2021 (Consolidated)) [2025] KEELC 4505 (KLR) (13 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4505 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION E32 OF 2021
& PETITION E33 OF 2021 (CONSOLIDATED)

FM NJOROGE, J

JUNE 13, 2025

BETWEEN

SWALEH MOHAMED SALEH 1ST PETITIONER
AWADH SALEH SAID 2ND PETITIONER
CONSERVATORY ALLIANCE OF KENYA 3RD PETITIONER
RAABIA HAWA 4TH PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT
CABINET SECRETARY MINISTRY OF DEFENCE 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT

AND

MINISTRY OF TOURISM AND WILDLIFE INTERESTED PARTY
KENYA WILDLIFE CONSERVANCIES ASSOCIATION ... INTERESTED PARTY
KENYA WILDLIFE SERVICES INTERESTED PARTY
KENYA FOREST SERVICES INTERESTED PARTY
CONSERVATION ALLIANCE OF KENYA INTERESTED PARTY
MINISTRY OF ENVIRONMENT AND FORESTRY INTERESTED PARTY
NAIROBI RANCHING COMPANY INTERESTED PARTY
KIPINI WILDLIFE BOTANICAL CONSERVANCY TRUST ... INTERESTED PARTY



NOTE

RULING

1. There are two applications for determination and they both seek similar orders against the Petitioners' claim. The first was filed by the 3rd Respondent and is dated 5/7/2024, wherein the orders sought were framed as follows: -
 1. That the Petitioners' suit against the Respondents be dismissed for want of prosecution;
 2. That all the Petitioners' claims against the Respondents be forthwith dismissed;
 3. That the costs of this application be borne by the Petitioners.
2. This application is based on the grounds enumerated on the face of the Motion as follows: -
 - a. That Petition E032 of 2021 was brought to this honourable court vide Petition dated 30/11/2021;
 - b. That the 3rd Respondent filed grounds of opposition and notice of preliminary objection on 14/12/2021;
 - c. That on 25/1/2022, the 3rd Respondent filed submissions on its preliminary objection;
 - d. When the matter came for directions on 10/2/2022, the honourable court was informed that the Petitioners had initiated negotiations with the 1st and 2nd Respondents;
 - e. That on 9/6/2022, ELC Pet E032 of 2021 and E033 of 2021 were consolidated;
 - f. That the 7th and 8th Interested Parties filed two separate applications dated 14/1/2022 and 27/9/2022 respectively seeking joinder as interested parties to the Petitions;
 - g. That this honourable court issued a ruling on 9/6/2023 in respect of the two applications, allowing the application thus granting leave to the 7th and 8th Interested Parties to be enjoined in the matters;
 - h. That it is now over a year since the honourable court issued the ruling and the Petitioners have not taken any further steps to prosecute the consolidated Petitions;
 - i. That the Petitioners' conduct is indicative of their disinterest in prosecuting this matter.
3. The second application is dated 16/9/2024 brought by the 7th and 8th Interested Parties, and it sought the following reliefs: -
 1. That the suit be dismissed for want of prosecution;
 2. That the costs of this application and of the suit be provided for.
4. The 7th and 8th Interested Parties based their application on the grounds listed on the face of their Motion and the supporting affidavit sworn on 16/9/2024 by Omar Sherman, described as director and shareholder of the 7th Interested Party. The basis of their application was that the suit has not been set down for hearing for over one year since it was last listed for a ruling on 9/6/2023, when the court ordered that the 7th and 8th Interested Parties be joined to the suit.



5. Both applications are opposed. The 1st Petitioner filed two replying affidavits dated 8/10/2024. He stated that the inactivity on the part of the Petitioners in this matter was because of extraneous circumstances which have made it difficult for them to diligently progress. The primary challenge being his father's (the 2nd Petitioner) illness and unfortunate death on 20th May 2024. He asserted that they are in the process of applying for grant letters of administration intestate and will pursue the petitions to a logical conclusion as soon as the grant letters of administration are issued.
6. The 1st Petitioner added that the said Omar has been an instigator of numerous family wrangles over the directorship of the 7th Interested Party, and numerous civil cases, and yet, despite preoccupying the 1st and 2nd Petitioners with those cases, and having knowledge of the 2nd Petitioner's illness prior to his death, he has moved the court to dismiss the Petitions, and without any authority from the 7th Interested Party company. He urged the court to dismiss the applications.
7. The 3rd and 4th Petitioners filed replying affidavits respectively sworn on 22/10/2024 and 8/10/2024. In the 3rd Petitioner's affidavit which was sworn by Stephen Okobo Itela, it was stated that the delay in taking further steps to prosecute the matter has been unintentional and was occasioned by circumstances beyond the 3rd Petitioner's control. The deponent narrated that upon filing Petition E033 of 2021, Omar Sherman, mentioned above, resorted to intimidation tactics against the 4th Petitioner and himself (Stephen Okobo) through the criminal justice system and the police service, so as to harass them into dropping their objection to his intended acquisition of the subject land. The deponent further stated that the delay has been caused by the need to amend the petition following the joinder of the 7th and 8th Interested Parties. He stated that dismissing the suit would allow compulsory acquisition and in turn expose the existing flora and fauna to potential destruction contrary to the State's constitutional obligation to eliminate activities that are likely to endanger the environment. He added that he consolidated petitions are of significant public interest, therefore, the principles of dismissal of suits under the Civil Procedure Rules should not apply.
8. In her replying affidavit, the 4th Petitioner stated that she is a conservationist focused on wildlife conservation and the founder of Ulinzi Africa Foundation whose core mandate is wildlife conservation. She deposed that she has been largely distracted from prosecuting the suit, by defending threats and intimidation from Omar Sherman. She claimed that the said Omar has been filing frivolous lawsuits against her and later withdrawing them in his efforts to intimidate her to drop her opposition to the intended acquisition of land belonging to the 7th Interested Party, by the 1st Respondent. One of the said suits she identified as Garsen CM Civil Suit No. 103 of 2021 Kipini Wildlife Botanical Conservancy Trust v Raabia Hawa. She added that Omar has continuously used the criminal justice system to intimidate and threaten her and that on 3/10/2022, she was summoned to the Directorate of Criminal Investigations to furnish information relating to a complaint by the said Omar.
9. The 4th Petitioner further stated that her employees have also faced harassment and threats over their lives and that despite making several reports to the police, they have failed to take any action against Omar. He added that the delay in prosecuting the petitions was also occasioned by the joinder of the 7th and 8th Interested Parties, since there is need for her to do more research so as to amend the Petitions accordingly. To her, there is overwhelming public interest in sustaining the Petition rather than dismissing them at this stage.
10. Both applications were canvassed by way of written submissions.



3rd Respondent's Submissions

11. Mr. Ojwang, State Counsel, filed submissions dated 3/2/2025, wherein he singled out two issues namely - whether there was undue delay in prosecuting the matter; and whether any reasonable justification for the delay was given. Counsel submitted that the Petitioners have demonstrated undue delay of over one year in direct violation of the principles of expeditious resolution of disputes as enshrined under Article 159 (2) (b) of the Constitution of Kenya and Order 17 Rule 2 (3) of the Civil Procedure Rules, 2010. He argued that such a delay is prejudicial to the Respondents who have a right to see the matter brought to a fair, just and timely conclusion. In support of this, he relied on the case of Nelly Chelangat Mutai v Joseph Waititu Mwangi & Others [2018] eKLR where the court dismissed a petition for want of prosecution and stressed on the importance of having petitions heard expeditiously.
12. In relation to the second issue, Mr. Ojwang argued that the reasons given for the delay are flimsy and that the death of the 2nd Petitioner cannot be plausible enough to not prosecute the petitions, by virtue of Order 24 Rule 3 (1) and (2) of the Civil Procedure Rules. He added that the reasons given by the 3rd and 4th Petitioners were an afterthought as they only raised them after the 3rd Respondent initiated the dismissal proceedings. He argued that equity rewards the diligent and that the Petitioners have not been diligent in the pursuit of this matter. Counsel relied on the case of Nilani v Patel & Others [1969] EA page 341 as was cited in Mobile Kitale Service Station v Mobil Oil Kenya Limited & another [2004] eKLR.

7th & 8th Interested Parties' Submissions

13. Similarly, the issues for determination in their submissions dated 13/12/2024 were 2 - Whether the Petition herein qualifies for dismissal for want of prosecution under the law, and what are the orders as to costs.
14. Counsel submitted that the discretion to dismiss a suit for want of prosecution under Order 17 Rule 2 of the Civil Procedure Rules goes hand in hand with the now famous overriding objective under Sections 1A and 1B of the Civil Procedure Act Cap 21 of the Laws of Kenya which calls upon judicial officers to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. She submitted that the principles which the law has developed to guide the courts in dismissal of matters were laid down by Lord Diplock in *Birket V James* [1978] A.C. 297 and has been adopted by several cases in Kenya including *Utalii Transport Company Limited & 3 Other V NIC Bank Ltd & Another* [2014] eKLR where Gikonyo J enunciated the principles as follows:- a) Whether there has been inordinate delay on the part of the Petitioners in prosecuting the case; b) Whether the Petitioners have offered a reasonable explanation for the delay; c) Whether the delay is intentional, contumelious and, therefore inexcusable; d) Whether the delay is an abuse of the Court process; e) Whether the delay gives rise to substantial risk to fair trial or causes prejudice to the Defendant; and f) What prejudice will the dismissal occasion to the Petitioners?
15. Counsel's submission was that the delay in the present case has been inordinate, that it has not been explained and therefore is inexcusable. She asserted that the conduct of the Petitioners in not prosecuting this suit is indolent and should not excite any lenient exercise of discretion by the court. She added that Order 17 moves in to protect a Defendant/Respondent from adverse actions of an indolent Petitioners and even equity calls upon any litigant to be vigilant and not to sit on their rights 'equity aids the vigilant'. To her, the explanations given by the Petitioners do not explain the delay.



16. To counsel, the Petitioners are using this litigation to interrupt the operations of the 7th Interested party, and that this petition was filed with no intention of prosecuting it expeditiously and that it is an abuse of the justice system. Counsel referred the Court to Civil Appeal No. E165 of 2022 Fred Osano Okeyo V Simon Omare & Another.
17. Counsel added that the Petitioners' indolence runs contrary to the overriding objective of the court stipulated in Section 1A, 1B and 3A of the Civil Procedure Act and is therefore undeserving of any grace from the court.
18. Further citing the case of *Birkett V James (1977) 2 ALL ER 801*, counsel argued that the delay herein places the Respondents and the Interested Parties in a precarious situation where the Interested party's affairs cannot proceed, and especially the pending acquisition which are all legal pursuant to the mandate of the National Land Commission. She added that if this suit is allowed to proceed to trial, the Respondents will be prejudiced because securing the best evidence especially in terms of witnesses might be a challenge.
19. Counsel urged the court to allow the application with costs to the Respondents and Interested Parties.

1st Petitioner's Submissions

20. Counsel identified two issues for determination- whether there exists a reasonable and justifiable cause for the deal causing prejudice to the Applicants; and whether the public interest in this case warrants a different standard to be applied when considering a dismissal for want of prosecution.
21. It was counsel's argument that Order 17 rule 2 is subject to the applicants demonstrating that the delay caused was inordinate, inexcusable and unjustifiable and causes significant prejudice and great harm to them; that the said provision is also subject to the constitutional dictate under Article 159 (2) (d) which provides that justice shall be administered without undue regard to procedural technicalities. To support his argument, counsel relied on the case of *Argan Wekesa Okumu v Dima College Limited & 2 Others [2015] KEHC 7006 (KLR)*. Counsel argued that the 2nd Petitioner's sickness and the extended period of hospitalization and eventual death caused great angst within the family of the 1st Petitioner hence the delay in prosecuting the suit. To him, this delay is reasonable and justifiable.
22. Further, citing the case of *Mwangi S. Kimenyi v AG & Another [2014] KEHC 4220 KLR*, counsel submitted that the applicants have failed to demonstrate how 11 months constituted inordinate delay. He added that the applicants have not submitted any evidence to demonstrate that the delay in prosecuting the petitions has given rise to substantial risk to fair trial or has resulted into grave harm and injustice to them. Counsel contested that it was necessary to demonstrate the above as was held in the case of *Susan Gachambi Kanuri & George Kanuri v British American Insurance Co. Ltd (Civil Case 419 of 2003) [2014] KEHC 1957 KLR*.
23. To counsel, the delay was considerably contributed by the said Omar, hence the 1st Petitioner's delay should be excused. He argued that it is also well known that he who seeks equity must do equity and must come with clean hands, and that it would be prejudicial to the 1st Petitioner for the 7th and 8th Interested Parties to reap the benefits of their own wrongdoing. To buttress his argument, he placed reliance on the cases of *Re Winship 397 US 358 [1970]*; *Daniel Kyura Kiragu v Papillon Lagoon Reef Hotel & another [2020] KEELRC 80 (KLR)*; *Kokwo v Aokor (Environment and Land Appeal E016 of 2022) [2023] KEELC 20783 (KLR)*; and *Beijing Industrial Designing & Researching Institute v Lagoon Development Limited [2015] KECA 365 (KLR)*.



24. Quoting the cases of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2014] KESC 6 KLR, and *John Wekesa Khaoya v AG* [2013] KEHC 6082 KLR, counsel submitted that even while Section 19 (2) of the Environment and Land Act requires the court to abide by the Civil Procedure Rules, it should not rigidly enforce the rules governing dismissal of suits, due to the fact that the current petitions are of great public interest and go beyond the rules that apply in regular law suits. To him, that was because petitions, such as the present ones, raise serious constitutional issues that have a profound impact on the society and future generations.
25. On the issue of costs, counsel argued that there has not been any justification of costs and that each party should bear its own costs, especially since the petitions are of public interest.

3rd and 4th Petitioners' Submissions

26. In their submissions dated 4/3/2025, counsel submitted that the sole issue for determination is whether the petitions should be dismissed for want of prosecution. Like the 1st Petitioner's counsel, he argued that the rules on dismissal of suits should not be strictly applied in such petitions of public interest. He added that the test for dismissal of a suit under Order 17 of the Civil Procedure Rules, was clearly stated in *Ivita v Kyumbu* [1984] KLR 441 and restated in *Utalii Transport Company Limited & Others v NIC Bank Limited & Kanini Haraka Enterprises Limited* [2014] KEHC 7255 (KLR), and that the court's power to do so is discretionary (*Nilesh Premchand Mulji Shah & another t/a Ketan Emporium v M.D Popat & Others* [2016] eKLR).
27. To counsel, the overriding consideration is always whether justice can be done despite the delay. Counsel argued that this was explained in the case of *Allen v Sir Alfred McAlpine & Sons* cited in *Alloys Kevin Chepkwony v Chief Land Registrar, Nairobi, Stephen Muchai Githinji, Charles Onkwani Nyangito & Josephine Mochache* [2012] KEHC 3556 (KLR), and several other cases.
28. It was his submission that the court should not adopt the literal dictionary definition of the word inordinate, but rather apply its meaning in the sense of excessive as compared to normality. This, he stated was expressed in the case of *Mwangi S. Kimenyi v AG & Another* [2014] KEHC 4220 (KLR). Counsel added that in the case of [particulars withheld] v EMN & Another [2019] eKLR, where the court allowed a party to prosecute their case to conclusion despite a 2 years' delay, stated that under Order 17 Rule 1 (1) and (3), apart from satisfying the one-year threshold, an applicant must also show that the delay was inordinate and inexcusable in the circumstances of the case. To him, the applicants in this case have failed to show how 11 months' delay is inordinate and excessive as compared to what is normal in the circumstances of the present suit.
29. Counsel further argued that the opposing party has considerably contributed to the delay by their conduct and in such instances, the court should be hesitant to agree to their request for the dismissal of the suit. To support this argument, he was guided by the case of *Austin Securities v Northgate and English Stores Ltd* [1969] 1WLR 529 cited in the *Mwangi S. Kimenyi* case [supra].

Analysis And Determination

30. I have read through the applications, affidavits in support and response, the written submissions, the cited authorities and considered the relevant provisions of the law in this matter in order to arrive to an informed, just and fair decision. The sole issue arising for determination is whether the suit should be dismissed for want of prosecution.



31. Order 17 Rule 2(1) of the Civil Procedure Rules, which governs dismissal of suits for want of prosecution, provides as follows:

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

32. Further Order 17 Rule 2(3) of the Civil Procedure Rules, states thus:

“Any party to the suit may apply for its dismissal as provided in sub-rule 1.”

33. The meaning of the above provision therefore, is that a suit qualifies to be dismissed for want of prosecution if no application has been made or no step has been taken in the suit by either party for at least one year preceding the presentation of the application seeking dismissal of the suit. It is also undisputed that the power of the court to dismiss a suit for want of prosecution is discretionary.

34. I need not re-invent the wheel regarding the principles to be considered in such applications. Both parties have aptly stated them and I am guided by the case of *Argan Wekesa Okumu -v- Dima College Limited & 2 others* [supra] cited to me by the 1st Petitioner’s counsel herein. In that case, the court observed as follows-

“The principles governing applications for dismissal for want of prosecution are well settled and have been established by a long line of authorities. The Applicant must show that the delay complained of is inordinate, that the inordinate delay is inexcusable and that the Defendant is likely to be prejudiced by such delay. As such the 3rd Defendant in this case must meet the burden of proof in seeking the dismissal of the Plaintiff’s case for want of prosecution see the case of *Ivita -vs-Kyumbu (1984) KLR 441*. Further to this, the decision of whether or not to dismiss a suit is discretionary and this Court must exercise such discretion judiciously. Additionally, each case must be decided on its own facts keeping in mind that a court should strive to sustain a suit where possible rather than prematurely terminating the same.”

35. My perusal of the proceedings herein reveals that prior to the filing of the present application, the matter was last active in court on 9/6/2023 when the court delivered a ruling regarding an application for joinder filed by the 7th and 8th Interested Parties. Both ELC E032 OF 2021 and E033 of 2021 were filed on 1/12/2021 and consolidated on 9/6/2022.

36. The Petitioners do not deny that the matter remained dormant for over a year before the present applications for dismissal were filed in this matter. Their reasons for failure to prosecute the matter were firstly, that the 1st Petitioner was preoccupied with the illness and subsequent demise of the 2nd Petitioner, and also the wrangles and suits said to have been initiated by one Omar-the 7th Interested Party’s director. The Petitioners blamed the said Omar for intimidation tactics elaborated somewhere above in this ruling.

37. To me, the reasons given by the Petitioners are not plausible since all the Petitioners herein are represented by able counsel who would have continued with prosecution of the suit in whatsoever manner. The Petitioners’ reasons are an afterthought and not acceptable in the circumstances.

38. However, this is the Environment and Land Court established partly to ensure that disputes relating to environment are dealt with not only in an expeditious and efficient manner but also in a manner that ensures that the State’s obligations towards the sustainable exploitation, utilization and conservation



of the environment and natural resources and to eliminate processes and activities that are likely to endanger the environment are fulfilled. It is the last resort in such matters especially when state agencies are accused of neglecting their mandates in environmental matters. The decisions it makes should tally with the principle of *in dubio pro natura*, roughly translated to “if in doubt (rule) in favor of nature”. It is said in some quarters that the *in dubio pro natura* principle offers a higher degree of protection to the environment and their interests than the obligation to act with precaution (the precautionary principle) since it is the basis for preferring the interpretation of norms that grants the highest degree of protection to the environment.

39. The court has perused the petition. The claim therein is that the petitioners are conservationists involved with the Kipini Conservancy which sits on a great number of land parcels that are the target of compulsory acquisition for the 2nd respondent’s purposes. They cite the Lamu County Spatial Plan 2016-2026 as identifying the Kipini Conservancy as one of the area containing the most ecologically important natural assets such as forests, and wildlife and marine resources. Under Chapter 14 thereof titled “THE PREFERRED INTEGRATED COUNTY SPATIAL PLAN MODEL AND LAND USE ZONING FRAMEWORK,” the Kipini area and the Nairobi Ranch Conservancy conservation sub-zone feature at page 174. The permitted use according to that document for the Kipini Forest Ecosystem Zone is wildlife conservation and recreation. Under the land use regulations column on that page it is indicated that no development is allowed in that area. On the same page, the Nairobi Ranch Conservancy conservation sub-zone has wildlife conservation and recreation, transport and energy infrastructure wayleaves and eco-lodges development as the permitted use. The building footprints for the eco lodges are recommended not to exceed 0.5 acres. The Lamu County Spatial Plan 2016-2026 is a public document made pursuant to the Lamu county Government’s planning measures as envisaged by the Constitution of Kenya 2010 and Section 110(1) of the County Governments Act 2012. Under Article 67(2)(h) of the Constitution, the National Land Commission shall monitor and have oversight responsibilities over land use planning throughout the country. The NLC is the 1st respondent herein. The NLC must be deemed to be aware of the extent of consultation that has led to the decision to acquire the suit land. It can explain itself here with ease.
40. Conservation of the environment is the most current global issue in view of the diminishing natural resources some of which are being irreversibly lost. Having noted that this is an environmental dispute, I have observed that the expressed purpose of the Lamu County Spatial Plan is to counter a myriad of challenges related to land based resources such as encroachment on fragile ecosystems, unplanned settlements and also address the risks of irreversible damage posed by expected economic development to the county’s valued natural assets such as forests, mangroves and others in order to guide sustainable development. The Lamu County Spatial Plan 2016-2026 is expressed to have been arrived at after a comprehensive multi-disciplinary participatory process that in my view must have or ought to have involved the 1st respondent.
41. The petition before me reads as follows:
- “Pursuant to Gazette Notice No 12303 dated 12 November 2021 and gazette notice no 9857 of 21 the 1st respondent (NLC) expressed interest to acquire Kipini Conservancy on behalf of the 2nd Respondent for military purposes.”
42. It further reads as follows:
- “The conservancy sits in the tana delta ecosystem, which is a listed Ramsar Site. Wetlands protected by national governments to fulfil their obligations under the convention on wetlands of national importance (commonly known as the Ramsar Convention.)



The conservancy is an important bird and biodiversity area with 270 bird species recorded including woolly-necked stork...”

43. I think what I have stated is sufficient to indicate that crucial environmental issues may arise concerning the suit land within the present petition and I need not say more in order not to prejudice the hearing of the petition. I must turn to the present applications for dismissal of the petition.
44. Of course it is for litigants who come to court to finally prove their case by way of evidence and to prosecute their suits in a manner that does not weary the patience of their adversaries to the extent of applications for dismissal for want of prosecution being made. It is the law that where such applications are made the court may apply the law and grant or dismiss the same. However, where such applications have been made, as in the present suit, in a matter raising such crucial environmental issues that appear to have been subject of consideration in a devolved government’s spatial plan made under the Constitution and the law, the court ought to consider the applications comparative to the importance of the whole case.
45. The most important aspect to consider in the present petition is what amount of delay was occasioned by the petitioners, if it is inordinate, if it is inexcusable, and how much of prejudice it poses to the respondents and the interested parties in the terms envisaged in the *Argan Wekesa Okumu -v- Dima College Limited & 2 others* [supra].
46. The last ruling was read by this court on 9th June 2023. The applications now under consideration are based on the fact that the petitioners stayed for more than one year without taking a step in the matter with effect from 9/6/2023. The applications were filed on 5/7/2024 and 16/9/2024. The first application was therefore filed less than a month after the expiry of one year since the last ruling was read by the court. The other application delayed a bit in the coming.
47. Counsel for the applicants require to be credited for their vigilance and desire to have this litigation proceed expeditiously. However, if the law allows the period of one year before such applications can be made, this court thinks that the seriousness of the situation would be assessed from the length of delay after the one-year period has elapsed. In this case in a matter of days, the 3rd respondent took action in filing his application for dismissal. Due to the filing of the 3rd respondent’s application, it can not be told how much longer it would have taken the petitioners to take a step in the matter after the one year.
48. All in all while not blaming the applicants for their creditworthy vigilance, the opinion of this court is that the period of delay involved here is inexcusable but it is not inordinate. Also, considering the significance of the matters likely to emerge in the petition, this court finds it necessary to decline the applications and order the hearing of the petition in an expedited manner.
49. Consequently, disallow the applications dated 5/7/2024 and 16/9/2024 and I order that the petition shall be heard on its merits. The petition shall be mentioned on 30th October 2025 for directions as to hearing. The petitioners shall however pay to the applicants the costs of the two applications dated 5/7/2024 and 16/9/2024.

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

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

