Muriuki v Kinoti & 2 others (Environment and Land Miscellaneous Case E001 of 2025) [2025] KEELC 6628 (KLR) (17 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6628 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND MISCELLANEOUS CASE E001 OF 2025

JO MBOYA, J

SEPTEMBER 17, 2025

BETWEEN

JULIUS MURIUKI ..... APPLICANT

AND

TABITHA CIABERE KINOTI ..... 1ST RESPONDENT

MARTHA NKATHA ..... 2ND RESPONDENT

MARTIN MURUNGA ..... 3RD RESPONDENT

RULING

1. What is before me is the Notice of Motion Application dated 17th July 2025; brought pursuant to the provisions of section 79G of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; and all the enabling provisions of the law; and wherein the Applicant has sought the following reliefs:

    i. That the Application herein be certified as extremely urgent, service thereof be dispensed with and the same be heard Ex-parte in the first instance.

    ii. That this Honourable court be pleased to grant Leave to the Applicant to file an appeal out of time against the ruling delivered in Tigania ELC case NO. 42 of 2011 on 5th December 2019.

    iii. That pending the hearing and determination of the intended appeal, this Honourable court be pleased to make any further orders as it may deem just and expedient.

    iv. That the costs of this Application be provided for.

2. The application beforehand is premised on various grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit of Julius Muriuki [the applicant] and which is sworn on even date. In addition, the deponent has annexed various documents, including a draft memorandum of appeal, in respect of which leave is being sought.

3. The respondents were duly served. However, the respondents did not file any response to the application. Nevertheless, the respondents duly attended court and participated in the proceedings.

4. The instant application came up for hearing on the 17th of September 2025, whereupon same was canvassed vide oral submissions. The submissions that were canvassed/ventilated on behalf of the respective parties are on record.

5. Briefly, learned counsel for the applicant adopted the grounds contained in the body of the application and reiterated the averments in the body of the supporting affidavit. Moreover, learned counsel for the applicant highlighted three [3] key issues for consideration by the court. Firstly, learned counsel for the applicant has submitted that the applicant herein had filed a civil suit at Tigania wherein same sought various orders and reliefs pertaining to and concerning the ownership of LR. No. Tigania West/ Uringu II/2271 [the suit property].

6. Furthermore, learned counsel submitted that the said suit was heard and dismissed vide judgment rendered on the 5th of December 2019. Nevertheless, counsel has contended that instead of filing an appeal, the applicant herein was misadvised by his previous counsel and thereafter same [applicant] proceeded to file two other suits. Moreover, counsel added that the two suits that were subsequently filed were disposed of by the subordinate court.

7. It was the submission by learned counsel for the applicant that the failure by the applicant to file and or prefer an appeal was informed by the mis -advice of his previous/erstwhile advocates.

8. Arising from the foregoing, learned counsel has invited this court to find and hold that the mistake of counsel, namely; the applicant's previous counsel, ought not to be visited upon the applicant. Furthermore, it was submitted that the applicant should be afforded the opportunity to have his appeal heard and determined on merit[s] as opposed to being driven away from the seat of justice on the basis of [sic] mis- advice.

9. Secondly, learned counsel for the applicant has submitted that the application beforehand has been made timeously and with due promptitude and therefore the court ought to exercise its discretion in favour of the applicant.

10. Finally, it has been submitted that granting the application would accord with the principles, values and objectives of the *constitution*, 2010; as highlighted vide Article 159 of the *constitution* 2010. Instructively, learned counsel posited that the subject application has been filed in advancement and pursuit of the values underscored in the *constitution*.

11. The respondents opposed the application and contended that the applicant herein is guilty of abusing the due process of the court. Furthermore, it was submitted that the applicant herein has filed a plethora of suits and applications touching on and concerning the suit property. To this end, the respondents implored the court to dismiss the application and to award costs unto them [respondents].

12. Having reviewed the application and the supporting affidavit thereof and upon taking into consideration the submissions ventilated on behalf of the parties, I come to the conclusion that the determination of the subject matter turns on three [3] key issues, namely; whether the application beforehand has been made timeously and with due promptitude or otherwise; whether the applicant has tendered and or placed before the court any plausible reasons for the delay; and whether the application constitutes an abuse of the due process of the court or otherwise.

13. Regarding the first issue, it is imperative to recall and reiterate that the ruling/Judgment or better still, the decision which is sought to be appealed against was rendered on 5th December 2019. On the

contrary, it is common ground that the subject application was not filed until the 17th July 2025. In my computation of time, it is evident that the decision sought to be appealed, has been put in place for a duration exceeding seven (7) years. Quite clearly, the duration of time taken is not only unreasonable but grossly inordinate. [See Andrew Chemaringo vs Paul Kipkorir Kibet (2018) eKLR at paragraph 12 thereof]. In this regard, and absent extenuating factors; circumstance[s], the doctrine of Laches comes into play.

14. Moreover, the Supreme Court highlighted the significance of filing an application for extension of time without unreasonable delay in the case of Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling). For coherence, the Supreme Court distilled nine principles to be considered and stated as hereunder;

> This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion: Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and whether, in certain cases, like election petitions, public interest should be a consideration for extending time. What is the position of the Court of Appeal application No Civil Application Sup No. 5 of 2014(UR 2014) seeking certification? Is a letter to the Registrar sufficient to withdraw an application before the Court of Appeal? PARAGRAPH 86.

15. Taking into account the length of time that has lapsed and considering the circumstances of this matter, it is evident that the length of delay is such that the doctrine of laches sets in. To this end, I find and hold that the subject application is defeated by the doctrine of laches. [See the Chief Land Registrar & another vs Nathan Tirop Koech (2019) eKLR].

16. Turning to the question of whether the applicant has tendered and or preferred any credible/plausible reason, it is important to highlight that it behooves the applicant to place before the court an explanation that is candid, honest and bona fide. For good measure, the law does not only require honesty and candour, but that the reason must be objective and demonstrate sufficient cause. For good measure, the reason; or explanation must not be mischevious.

17. The Court of Appeal in the case of Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) (Ruling) stated as hereunder:

> In order to exercise its discretion whether or not to grant condonation, the court must be appraised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success. Condonation cannot be had for the mere asking. An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.

13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.

18. Guided by the succinct reasoning expounded in the decision [supra], I find and hold that the reasons and explanation being offered by the applicant herein are not only wrought and fraught with mala-fides, but same are devoid of honesty. Additionally, the purported reason[s] are informed by mischief and an endeavour to play lottery with the Court. I am afraid that the applicant has not accounted for the delay and or failure to file the appeal within the prescribed timeline.

19. Moreover, it is evident that the applicant herein is merely intent on having a further bite of the cherry of justice. I say this because the applicant has since filed two other suits claiming ownership of the same land but which suits have been dismissed. Having suffered defeat in the subsequent suit[s], the applicant herein is now being disingenuous and is seeking to circumvent various orders of the court under the guise of exploring an opportunity to appeal.

20. To my mind, the applicant herein must be told in no uncertain terms that he can only have one bite on the cherry. In this respect, any subtle; or disguised endeavor to defeat the cause of justice must not only be deprecated, but be frowned upon.

21. Finally, I beg to state that the number of times that the applicant herein has approached the seat of justice denotes abuse of the court process. Quite clearly, the applicant herein cannot be allowed to continue filing suits after suits and applications, pertaining to the same question and or matter. Such endeavours constitute abuse of the due process.

22. The concept of abuse of the due process of the court has been the subject of various court proceedings. In the case of Rutongot Farm Ltd v Kenya Forest Service & 3 others (Petition 2 of 2016) [2018] KESC 27 (KLR) (19 September 2018) (Ruling) the Supreme Court expounded on the concept as hereunder;

> " The concept of "abuse of the process of the Court" bears no fixed meaning, but has to do with the motives behind the guilty party's actions; and with a perceived attempt to manoeuvre the Court's jurisdiction in a manner incompatible with the goals of justice. The bottom line in a case of abuse of Court process is that, it "appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak to be beyond redemption..."
>
> ... Beyond that threshold lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of Court process."

23. Furthermore, it is also instructive to cite and reference the decision in the case of Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR) where Justice Mativo, Judge [as he then was] stated as hereunder;

> " 28. Multiplicity of actions on the same matter between the same parties, even where there exists a right to bring the action is regarded as an abuse. [18] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary

> and interface with the administration of justice. [19] I find no difficulty in concluding that this Judicial Review Application is based on similar grounds as the Petition referred to above."

24. In a nutshell, I find and hold that the subject application constitutes and amounts to an abuse of the due process of the court. To this end, the application is a sure candidate for dismissal.

Final Disposition.

25. Having analyzed the issues that were highlighted in the body of the ruling, it must have become crystal clear that the application before hand is not only informed by mala-fides and mischief; but same constitutes an abuse of the due process of the court.

26. The application courts dismissal.

27. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;

    i. The Application be and is hereby dismissed.

    ii. Costs of the Application be and are hereby awarded to the Respondents.

    iii. The Costs in terms of clause [ii] shall be taxed by the Deputy Registrar of the court.

28. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF SEPTEMBER 2025.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE.

In the presence of:

Hussein – Court Assistant

Mr. Mungai for the Applicant

Martha Nkatha- 1st Respondent in person

Tabitha Ciabere Kinoti- 2nd respondent in person

Martin Murunga- 3rd Respondent in person