



REPUBLIC OF KENYA



**Nguku v Gachuru (Environment and Land Miscellaneous Case
E009 of 2025) [2025] KEELC 6611 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E009 OF 2025
MN GICHERU, J
SEPTEMBER 30, 2025**

BETWEEN

KAMANDE NGUKU APPLICANT

AND

PAUL MURIGI GACHURU RESPONDENT

RULING

1. This ruling is on the notice of motion dated 9-5-2025. The motion which is by the Applicant is brought under Section 3A of the *Civil Procedure Act* and all other enabling provisions of law.
2. The motion seeks two (2) residual prayers.
 2. The Applicant be granted leave to appeal against the judgment of the learned Lady Justice J.G. Kemei dated 16-12-2017 out of time.
 3. The Court be pleaded to stay execution of the judgment dated 16-12-2017 and orders of this court dated 28-4-2025 which were to the effect that land parcel No. Loc.17/Kamahuha/2634 be transferred to the Respondent.
3. The motion is based on Six(6) grounds and is supported by an affidavit sworn by the Applicant. The gist of motion is as follows. Firstly, the Applicant was kept in the dark about the proceedings on ELC No 164 of 2017 because the case started in Nyeri and when it was transferred to Murang'a Law Courts, the Applicant was not notified. Secondly, and a result of the above, the Applicant was condemned unheard contrary to the rules of natural justice. Thirdly, the question of adverse possession is alien to the Applicant and this being an emotive land matter, it should be reopened and the Applicant granted leave to defend the suit. Fourthly, the Respondent came to Court with unclean hands for failing to involve the Applicant when the case was being heard and the Applicant only came to know of the suit and judgment when he was served with the application for execution dated 4-3-2025. Finally, the Applicant did not sell the suit land to the Respondent and all that he did was to lease it to him.



4. The motion is opposed by the Respondent who has sworn a replying affidavit dated 30-5-2025, in which he replies as follows. One, contrary to what the Applicant states, he was well aware of the pleadings of ELC Case No. 164/2017 but he deliberately chose not to participate as can be seen from the affidavits of service by Edwin Munyoro Wandai and Simon Kamau Ngigi dated 24-6-2019, 11-7-2017 and 5-7-2016 respectively. All these affidavits show that the Applicant was served at his home in Kamahuha Sabasaba and he was pointed out to the process server by the Respondent himself. Secondly, after the Applicant was served with the judgment and decree in ELC 164 of 2017, he filed miscellaneous application No. 27/2018 at CM's Court Thika and failed to serve the Respondent. He did this in a bid to defeat the judgment and decree in favour of the Respondent. He managed to lift the caution placed against the suit land and immediately subdivided the suit land into parcels Nos. 2906, 2907 and 2908 two of which he transferred to third parties but he did not transfer LR. No. 2908 which the Respondent occupies. Thirdly, even on 14-3-2025 when there was an application coming up for hearing, the Applicant attended Court and the Respondent actually saw him. Like always, he chose not to participate. Finally, during the trial, the Respondent was able to prove that he bought the suit land and he produced a sale agreement to prove that the Applicant sold the suit land and all that lacked was the consent of Land Control Board. For the above and other reasons, he prays that this litigation should come to an end by the Court dismissing the motion dated 9-5-2025 which is only meant to delay justice to the Respondent.
5. Counsel for the parties filed written submissions dated 18-6-25 and 20-5-2025 respectively. Counsel for the Respondent urged that this Court should consider the principles that guide the court in exercising its unfettered discretion in deciding whether or not to allow an application such as this. These principles were laid down in the case of Nicholas Kiptoo Korir arap Salat vs. IEBC and 7 Others [2014] by the Supreme Court of Kenya. The principles include the following.
 - a. Extension of time is not a right of the party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
 - b. A party who seeks for extension of the time has the burden of laying a basis to the satisfaction of the Court.
 - c. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case by case basis.
 - d. Whether there is a reasonable should be explained to the satisfaction of the Court.
 - e. Whether there will be any prejudice suffered by the Respondent if the extension is granted.
 - f. Whether the application has been brought without undue delay.
6. Counsel for the Applicant urged that the one acre claimed is not delineated and defined and this makes the Respondent's claim unsubstantiated and the appeal raises unassailable grounds and the Court should therefore allow the application dated 9-5-2025.
7. I have carefully considered the notice of motion dated 9-5-2025 in its entirety including the grounds, supporting affidavit and annexures, replying affidavit and its annexures, the entire record in ELC 164/2017, the written submissions by learned counsel for the parties and the law cited therein.

I find that the motion dated 9-5-2025 has no merit for the following reasons. Firstly, the record will show that after the Applicant was served with the originating summons dated 12-6-2015, he filed a memorandum of appearance on 25-8-2015. He did not file anything else. If he truly wished to defend the suit, he would have filed his replying affidavit together with all the evidence that he had. If he had nothing to file in the year 2015, what is it that he wants to file ten (10) years later? Secondly, I



am convinced that the Applicant was served by the two process servers named Edwin Munyoro and Simon Kamau Ngigi on various dates in the years 2016, 2017 and 2019. I am not satisfied that he only came to know of the suit and judgment when he was served with the application for execution dated 4-3-2015. For ten (10) years, the Applicant knew of the suit and chose not to participate in it. Finally, it is immaterial that the suit land is not demarcated in the survey map. The land is available on the ground and that is all that matters. The ruling of 28-4-2025 clearly stated that the portion of land which the Respondent occupies and which measures one acre is the one to be registered in his name and that occupation overrides any title issued before or after his occupation. That should put to rest any notion that the land awarded to the Respondent is not defined because it is clearly defined in the ruling of 28-4-2025.

For the above reasons, I dismiss the motion dated 9-5-2025 with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30TH DAY OF SEPTEMBER , 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel – Mr T.M. Njoroge

Respondent's Counsel – Absent

