



**Republic v National Land Commission & 2 others; Kamasas Farmers Co-operative Society (Interested Party); Eastern Produce Kenya Limited (Ex parte Applicant) (Environment and Land Civil Miscellaneous Application E001 of 2023) [2025] KEELC 6210 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6210 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E001 OF 2023  
GMA ONGONDO, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY STATE DEPARTMENT FOR LAND AND  
PHYSICAL PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KAMASAS FARMERS CO-OPERATIVE SOCIETY ..... INTERESTED PARTY**

**AND**

**EASTERN PRODUCE KENYA LIMITED ..... EX PARTE APPLICANT**

**RULING**

1. This ruling is in respect of an application by way of a Notice of Motion dated 8<sup>th</sup> November 2024 by Belinda Akello learned counsel for the 1<sup>st</sup> respondent/applicant seeking the following orders;
  - a. That the submissions filed on 26<sup>th</sup> September 2024 by the respondent/applicant to be deemed as properly filed.
  - b. That the costs of this application be provided for.



2. The application is premised upon a 26-paragraphed affidavit of the applicant's counsel, Obino Eunice and the eight grounds set out on its face which include;
  - a. That, on 26<sup>th</sup> September, 2024, the Honourable Court noted that there were no submissions on record from all the parties and directed that parties should ensure that the said submissions are placed on record.
  - b. That, the Respondent/Applicant filed their submissions on 26<sup>th</sup> September, 2024.
  - c. That, on 15<sup>th</sup> October, 2024, the Court directed that the Respondent/Applicant filed their submissions out of time and the same will not be considered.
3. Briefly, the applicant's lamentation is that on 13<sup>th</sup> June 2024, the court delivered a ruling on the Notice of motion dated 12<sup>th</sup> January 2024 and immediately, learned counsel for the Ex parte applicant sought and obtained leave to file a further affidavit in response to the issues raised by the parties on record and the court directed parties to file their submissions. That on 26<sup>th</sup> September 2024, the court noted that there were no submissions on record from all the parties hence, directed them to file the same within three days from that date. That thereafter, counsel for the applicant was held up in a site visit of a three-judge matter, Iten E007 of 2022 Kituo cha Sheria-vs-Honourable Attorney General and others and there was challenge in e-filing of the submissions within the set timelines but eventually filed them on 26<sup>th</sup> September 2024 thus, precipitating the present application.
4. The Ex parte applicant formerly represented by Kaplan and Stratton, opposed the application by way of the grounds of opposition dated 10<sup>th</sup> December 2024 thus;
  - a. The 1<sup>st</sup> respondent's submission is defective, misconceived and bad in law.
  - b. The 1<sup>st</sup> respondent has not advanced any cogent reasons and supporting evidence for the failure to file its submissions as directed by the court on 13<sup>th</sup> June 2024. The 1<sup>st</sup> respondent is thus not deserving the court's discretion.
  - c. The applicant will be prejudiced if the 1<sup>st</sup> respondent's submissions are allowed as they raise new issues not captured in the pleading by the parties.
5. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents through Ms Odeyo instructed by the Honourable Attorney General, are in support of the application.
6. The interested party through learned counsel, Flora Nderitu, does not oppose the application.
7. On 30<sup>th</sup> January 2025, the court directed that the application alongside the grounds of opposition be heard by way of written submissions.
8. By the applicant/1<sup>st</sup> respondent's submissions dated 14<sup>th</sup> February 2025, reference is made to, inter alia, the suit, leave sought by the applicant on 26<sup>th</sup> September 2024 and granted to file submissions as well as the extension to file the same. Counsel for the applicant submitted that the delay to file submissions was occasioned by the applicant's counsel who was involved in a three-Judge matter at Iten and the challenge with the e-filing system. That failure to consider the applicant's submissions would deny the applicant the right to be heard which will be adverse or prejudicial to the applicant. Counsel urged that the court has an unfettered discretion thus, grant the orders sought in the application. To buttress the submissions, counsel relied on the case of Patel-vs-E. A Cargo Handling Services (1974) EA 75 and the case of Richard Ncharpi Leiyagu-vs-Independent Electoral Boundaries Commission & 2 others (2013) eKLR on exercise of the court's discretion.



9. The firm of Oraro and Company Advocates for the Ex-Applicant/Respondent who entered on record in place of Kaplan and Stratton Advocates for the Ex parte applicant Advocates via the notice of change of Advocates dated 15<sup>th</sup> July 2025, filed submissions dated 17<sup>th</sup> July 2025, referring to the instant application, the grounds of opposition and leave granted by the court given on 13<sup>th</sup> June 2025. That on 15<sup>th</sup> October 2025, the court noted that the 1<sup>st</sup> respondent's submissions were filed out of time hence, bearing in mind the court's discretion, the 1<sup>st</sup> respondent/applicant does not deserve the orders sought in the application. To fortify the submissions, reliance was placed on, among others, Dilpack Kenya Limited-vs-William Muthama Kitonyi (2018) eKLR, Shah-vs-Mbogo and another (1967) EA 1116 and Raila Odinga & another-vs-Independent Electoral and Boundaries Commission & others (2017) eKLR.
10. The other parties did not file their submissions for reasons stated in paragraphs 5 and 6 hereinabove.
11. In the foregone, are the application and the grounds of opposition meritorious?
12. The application is for admission of the applicant/1<sup>st</sup> respondent's submissions filed out of the time lines set by the court. I note the directions of the court made on 26<sup>th</sup> September 2024 when both parties were given three days to avail their submissions.
13. It noteworthy that Order 50 of Order 50 of the Civil Procedure Rules 2010 governs time.
14. The applicant's contention is that there was delay in filing the submissions due to challenge with the e-filing system, among others. The Ex parte applicant's counsel stated that there is no sufficient reason for the delay thereof. Notably, on 26<sup>th</sup> September 2024, the court directed the Deputy Registrar to confirm mapping of the advocates in the matter on the Court Tracking System (CTS) and parties to appear before the Deputy Registrar for confirmation of service of the submissions on 2<sup>nd</sup> October 2024.
15. It is trite law that the general trend, following the introduction of the overriding objective in various statutes as well as Article 159 (2) (d) of *the Constitution* of Kenya 2010, is that the courts strive to sustain rather than strike out pleading or a matter purely on technical grounds. That justice must not be sacrificed on the alter of strict adherence to provisions of procedural law which at times create hardship and unfairness; see Nicholas Salat-vs-Independent Electoral and Boundaries Commission & 7 others {2014} KECA 782 (KLR).
16. This court is empowered to administer justice without due regard to procedural technicalities as provided for under sections 3 and 19 of the *Environment and Land Court Act* 2015 (2011).
17. More fundamentally, Articles 159 (2) (d) and (e) of *the Constitution* of Kenya 2010 anchor the principle stated in paragraph 16 above and that the purpose and principles of *the Constitution* shall be protected and promoted.
18. Furthermore, Article 48 of *the Constitution* of Kenya 2010 provides for access to justice and the right to fair hearing which is unlimited under Articles 50 (1) and 25 (c) of the same Constitution.
19. Moreover, it is established law that the right to be heard before an adverse decision is taken against a person is a fundamental right and permeates our entire justice system; see Sangram Singh -vs- Election Tribunal, Koteh, AIR 1955 SC 664, at 711, Onyango Oloo-vs-Attorney General (1986-1989) EA 456, James Kanyitua Nderitu & another-vs-Marios Philotas Ghikas and another (2016) eKLR.
20. To that end, the finding of this court is that the applicant has the right to access justice and an unlimited right to fair hearing of the application inclusive of the submissions duly filed pursuant to the directions of the court herein. Therefore, the applicant has given satisfactory explanation for the delay in filing



the submissions and deserves the principal order sought in the application taking into account Patel, Leiyagu, Diplack and Shah cases (supra).

21. Wherefore, the application dated 8<sup>th</sup> November 2024 is hereby allowed in terms of prayer number one as regards the submissions filed on 26<sup>th</sup> October 2024 with costs in the cause.

22. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**G M A ONGONDO**

**JUDGE**

Present;

Mr John Mbaluto alongside Mr S.Odhiambo and Mr C. Otieno Learned counsel for the Ex Parte 1<sup>st</sup> Respondent/applicant

Ms E. Obino instructed by Ms Akello learned counsel for the Applicant

Ms F. Nderitu Learned counsel for the interested party.

Walter, court assistant

