



**Kamau & 4 others v Njuguna (Environmental and Land Originating Summons  
E008 of 2025) [2025] KEELC 6862 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6862 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2025  
A OMBWAYO, J  
OCTOBER 9, 2025**

**BETWEEN**

**FLORENCE WANJIRU KAMAU ..... 1<sup>ST</sup> APPLICANT**

**SAMUEL KAGOCHI MWAURA & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3  
OTHERS & 3 OTHERS & 3 OTHERS ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MUSA NJUGUNA ..... RESPONDENT**

**RULING**

**Brief Facts**

1. This is a ruling in respect the application dated 11th April, 2025 filed by the Applicants seeking the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That the Honourable Court be pleased to grant the applicants leave to file suit out of time against the Respondents.
  - d. That the costs of this application be provided for.
2. The Application was supported by the Affidavit of Peter Macharia Sigaka a trustee of the Applicant sworn on 8th April, 2025. He stated that after contributions from the congregants, the 1st Respondent acting as the Regional Overseer of the New Testament Church of God acquired two properties on behalf of the church after which construction of the church commenced. That the two properties, were Mau Summit/Molo Block/1/181 and Mau Summit/Molo Block/1/182. He stated that initially, the 1st Respondent had the two (2) properties registered in his name but later stated that he had donated



the properties to the New Testament Church of God. He further stated that the 1st Respondent thereafter registered a new Ministry against the Church rules. He went on to state that on 30th July 2004, Moses P.N Njoroge, the then National Overseer, proceeded to register a caution against the two properties to prevent the Respondent from interfering with the suit properties. He stated that the Applicants proceeded to file Nakuru Civil Suit No. 247 of 2004 against the Respondents herein seeking permanent injunctions which the court granted them the orders. He added that during the pendency of the suit together with the injunction orders that were still subsisting, the 1st Respondent illegally caused the 2 properties to be transferred from the name of New Testament church of God Kenya to his name. He stated that the Civil Suit was then transferred to the ELC Court and the same was given a new Case number being Nakuru ELC No.129 of 2019.

3. He further stated that the case was heard and judgment was rendered on 23rd September, 2024, where the Court declined to determine the matter on merit and struck out the same for want of locus on the part of the Plaintiffs. That consequently, the Plaintiffs filed a fresh suit against the Respondents being ELCLC/E072/2024 together with an application for temporary relief. He added that the Respondents filed a Preliminary Objection where the suit was struck out vide a ruling dated 19th March 2025 on the basis that it was time barred. He stated that there was need to protect the integrity of the Applicant's church and its constitutional right to ownership of property which has since been interfered with by the Respondents. He urged the court to allow the application as prayed as the matter was yet to be determined on merit.

### Response

4. The 1st Respondent filed his Replying Affidavit sworn on 24th April, 2024 where he averred that the application sought for an injunction order together with extension of time to file suit out of time. He averred that the two prayers could not be sought in the same application. He further averred that the Applicant failed to show the nexus between Articles 40 and 51 of the Constitution and the circumstances of the suit. He added that Section 95 of the Civil Procedure Act applied where time had already been fixed by the court. He stated that in the present case, the limitation period was fixed by the statute and the court could only extend time if certain statutory conditions had been met. He also averred that the present suit did not fall within the purview of Section 26 of the Limitation of Actions Act as its action was not based on fraud. He went on to aver that the court lacked the jurisdiction under Section 27 of the Limitation of Actions Act to extend time in land matters. He also averred that the Applicants proceeded to file a suit that was incompetent instead of withdrawing it and filing through the proper parties. He averred that the Constitution did not protect non-existent rights since the suit properties were currently in his name. That the Applicants had no rights capable of being protected. He urged the court to strike out the application with costs.

### Submissions

5. Counsel for the Applicants filed his submissions dated 15th August, 2025 where he identified two issues for determination. The first issue was whether the application had merit. While submitting in the affirmative, he relied on Section 1A (1) (2) of the Civil Procedure Act particularly on the court's discretion to enlarge time for the taking of procedural steps, where such an extension would serve the interests of justice. It was his submission that the lapse of time preceding the institution of the instant Application and intended suit was not inordinate. He submits that the delay was not occasioned by inaction, indolence or negligence on the part of the Applicants, but from protracted litigation over the same subject matter, which remained pending before the courts for a period exceeding two decades. He submits that prior litigation was filed in or about the year 2004 and was only concluded upon delivery of judgment in September 2024, after a span of over twenty (20) years. He went on



to submits that during the pendency of the said suit, the Applicants were legally constrained from filing a parallel or fresh suit relating to the same subject matter as it would have been struck out for offending the sub judice rule. He further submits that the Applicants were thus compelled to await the final determination of the earlier proceedings before seeking recourse through the present Application and intended suit. It was his submission that despite the lapse of time, the issues between the parties remained unresolved on their merits. That the Applicants stood to suffer substantial prejudice and possible dispossession if the issues in dispute are not heard and determined on merit. He cited the case of *Royal Media Services Ltd v valentine Mugure Maina & Another* (2019) eKLR and *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR. He submits that mere inconvenience or the passage of time does not, in itself, constitute legal prejudice sufficient to bar a deserving litigant from accessing justice. He went on to submit that in the absence of demonstrable prejudice, the balance of convenience and the interests of justice tilt in favour of allowing the Application. He submits that the Applicants demonstrated that they have a prima facie case with a high likelihood of success. He submits that it was in the interest of justice, fair administrative process, and the right to access courts under Article 48 of the *Constitution*, that the Applicants be afforded an opportunity to prosecute their claim.

6. The second issue was whether the Preliminary Objection was merited. Counsel submits in the negative and relies on the cases of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 and *Microsoft Corporation v Mitsumi Computer Garage Ltd & Another* [2001] EA 460.
7. He submits that the Respondent's attempt to summarily terminate the Application on grounds of limitation, without any proof of irreparable prejudice, was inimical to justice. He further submits that it would not only unduly deprive the Applicants of its constitutional right to be heard, but also undermine the rule of law. He cited the cases in *Raila Odinga & 3 Others v IEBC & 2 Others* [2013] eKLR and *Peter Ngugi Kibiri v Esther Wangari* [2015] eKLR.
8. In conclusion, he urged the Court to adopt a purposive and contextual interpretation of both the limitation statute and the applicable substantive rules, so as to safeguard access to justice, uphold fairness, and ensure that the dispute is determined on its merits.
9. Counsel for the Respondent on the other hand filed his submissions dated 17th July, 2025 where he gave a summary of the case and relied on Sections 26 and 27 of the *Limitation of Actions Act*. He submits that Section 26 relates the period when time will not be deemed to run, specifically, where an action is based on fraud or mistake and or where the right to file a suit is concealed through fraud. It was his submission that jurisdiction to grant leave to file a suit out of time is granted under Sections 27 and 28 of the *Act*. He relied on the case of *Ruth Wambui Nganga v Ngong Butchers Co- Operative Limited* ELC Misc. No. 762 OF 2015. Counsel submits that Section 27 lays down the two applicable legal requirements before the court can grant leave where the first is a question of law while the second is factual. He cited the Court of Appeal case of *Mary Osundwa v Nzoia Sugar Company Limited* [2002] eKLR, *Willis Onditi Odhiambo v Gateway Insurance Co., Ltd* [2014] eKLR and *Juma & 5 others v Mada Holdings t/a Baobab Sea Lodge Kilifi Limited* (Civil Appeal E034 of 2022).
10. It was counsel's submission that the Applicant deposed that the subject suit relates to ownership of two properties being Mau Summit/Molo Block 1/181 (Mutirithia) and Mau Summit/Molo Block 1/182 (Mutirithia) which the Applicant has occupied for over 30 years. He submits that under Section 7 of the *Limitation of Actions Act* such a claim ought to be filed before the expiry of (12) years from the date of accrual of the cause of action. He further submits that jurisdiction of this court to grant leave to file a suit out of time is limited to actions for damages for negligence, nuisance or breach of duty. He added that this court had no jurisdiction to grant leave to file a suit for ownership of land out of time. He submits that to the extent that this application invokes a jurisdiction which is none existent, the same ought to be struck out with costs.



11. He submits that the Applicant has failed to explain the delay in filing the suit hence the same is inordinate. He added that the pendency of an incompetent suit was not a valid explanation for failure to file a suit in time. He relied on the case of *Donald Osewe Oluoch v Kenya Airways Limited* Civil Appeal No. 247 of 2014 and *Ruth Wambui Nganga v Ngong Butchers Co-Operative Limited* ELC misc. No. 762 OF 2015. He submits that the claim by the proper trustees remained frozen for 30 years and even if the court was to consider the application on its merits, the same ought to be dismissed. He further submits that before the court grants a temporary injunction, the Applicant must demonstrate that there is a suit and that based on the pleadings, he has prima facie with a probability of success. He added that unless the orders of injunction are granted, he will suffer irreparable loss. He relied on Order 40 of the *Civil Procedure Rules* and the case of *Cresta Investments Limited v Gulf African Bank Limited & another* [2020] eKLR. He submits that the application for orders of injunction can only be based on a suit and thus the prayer for injunction is incompetent and it ought to be struck out with costs. Analysis and Determination
12. This court has considered the application, replying affidavit, and submissions and is of the view that the main issue for determination is whether the Applicant should be granted leave to file suit out of time.
13. The gist of the matter is that the suit had initially been filed in 2004 in Nakuru Civil Suit No. 247 of 2004 and thereafter transferred to Nakuru ELC No.129 of 2019. It is not in dispute that the matter was heard and judgment rendered on 23rd September, 2024, where the court struck out the suit for want of locus on the part of the Plaintiffs. It is also not in dispute that the matter was never determined on merit.
14. I have also perused the court records and it is not in contention that the 3rd Plaintiff in ELC 129 of 2019 was a trustee of New Testament Church of God Kenya on 10th June, 2015. It is also evident from the Certificate of Incorporation that he ceased to be a trustee on 16th September, 2022 when the case was still pending. It is not in dispute that when the court delivered its judgment on 23rd September, 2024, the 3rd Plaintiff had ceased to be a trustee of the church.

I have perused the pleadings and the Plaintiffs allege that they discovered fraud in 2004 prompting them to institute the suit against the Respondents. In the case of *Margaret Wairimu Magugu v Karura Investment Limited & 4 others* [2019] KECA 653 (KLR) the court held that:

“There is no doubt that under that provision, where the action is based on fraud the period of limitation prescribed does not begin to run until the plaintiff discovers the fraud. (see for instance *Kenya Ports Authority vs Timberland(K) Ltd* [2017] eKLR). However, having regard to the proviso to Section 26 of the Act as highlighted above, it is inconceivable that for 19 years, in the case of the deceased, and 24 years in the case of the appellant, they would have failed to discover, with the exercise of due diligence, the alleged fraud and to act if indeed the acquisition of the property by the 1st respondent was fraudulent.”

Section 26 of the *Limitation of Actions Act* provides as follows:

“Where, in the case of an action for which a period of limitation is prescribed, either—

1.
  - (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; or
  - (b) the right of action is concealed by the fraud of any such person as aforesaid; or



- (c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”

15. In the instant case, it is not in dispute that time stopped running in 2004 when the Plaintiffs had discovered the alleged fraud by the Respondents. It is this court’s view that the Plaintiff being a society, it was trite law that it could only sue through its officials or trustees. It was therefore incumbent upon the Plaintiffs to institute the case with its rightful trustees. It is not in dispute that the moment the suit was filed, it did not bore the rightful trustees and it was certainly clear that from the evidence by both PW1 and PW2, they admitted that they were not the rightful trustees of New Testament Church of God Kenya. Notably, it was also clear from the court’s finding that the Plaintiffs realized late when the matter had concluded that they had failed to produce evidence of the Certificate of Incorporation. They raised this as the very tail end of the case and vide the court’s ruling, the same was disallowed and the court proceeded to strike out their case for want of locus standi.
16. In the case of Amos Nyaga Kangangi v Murangi Gakinya, Harison Gichimu Mwangi, Robert J. Thuo A. Nyaga, Diocese of Meru registered Trustees, Mwenendega Enterprises Limited, Agnes Wawira Ireri, Monica Gatakaa Kirusa, Gilbert Gatakaa Kirusa, Komotho C/O Kamwire, Wilson Wachira Mugo, Julius Maina Kamotho, Julius Muriuki Waitbaka, Teresia Ruguru Muriuki, John M.N. Nderi, Joshua Ndungu Kingori, Harrison Waibenya Muthoni, Jane Kabura Thuo, Abel Muriithi Wamuti, Josephine Njeri Wamuti, Philip Wamuti Muchane, Anthony Mbiri Ndwiga & Patrick Muriithi Njogu [2017] KEELC 3260 (KLR) the court held as follows:
- “...It would appear to me that in cases where a party was under a disability or where there is fraud or mistake under Sections 22 or 26 of the Limitation of Actions Act, an application for leave would not be necessary. Instead, those provisions allow a party to file a suit notwithstanding the expiry of the limitation period so long as the action falls within those provisions.”
17. Further, in Nzoia Sugar Company Ltd v Kenya Ports Authority [1990] KEHC 79 (KLR) the court held as follows:
- “Although section 22 and 26 of the Limitation of Actions Act refer to extension of the limitation period in case of disability or fraud or mistake respectively, it seems to me that these sections do not envisage an application for leave to extend the limitation period and an application based on those sections would be incompetent. Rather these provisions empower a party to file a suit despite the expiry of the limitation period prescribed for the action and give the court jurisdiction to disregard the limitation period prescribed for the action if the suit falls within the scope of section 22 and 26 of the Limitation of Actions Act. If it was intended that applications under section 22 and 26 of the Limitation of Actions be made in court, then enabling rules similar to order XXXvI rule 3C providing for application for extension of limitation period under section 27 of Limitation of Actions Act could have been made.”
18. In view of the foregoing, it is my finding that this court has no powers to grant any extension of time to the Applicant to file suit out of the period and therefore the application dated 11th April, 2025 is hereby dismissed with costs. For purposes of clarity, the Applicants are at liberty to file the case with its correct trustees and have the same heard and determined on merit. It is so ordered.



**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

