



Republic v Attorney General & 6 others; Wilson (Ex parte Applicant) (Environment and Land Judicial Review Case E005 of 2024) [2025] KEELC 7394 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7394 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2024**

CK NZILI, J

OCTOBER 29, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

THE CABINET SECRETARY, MINISTRY OF LANDS HOUSING & PHYSICAL PLANNING 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

COUNTY LAND ADJUDICATOR TRANS-NZOIA 5TH RESPONDENT

DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .. 6TH RESPONDENT

LAND SETTLEMENT FUND BOARD OF TRUSTEES 7TH RESPONDENT

AND

LOSHAKEP CHUMEL WILSON EX PARTE APPLICANT

RULING

1. Before the court is an application dated 7/10/2025. It seeks to strike out the replying affidavit dated 29/9/2025 by the 1st, 2nd, 3rd, 5th, 6th, and 7th respondents, for not being filed and served within 14 days, as ordered by the court.
2. The grounds are set out on the face of the application and in a supporting affidavit of Loshakep Wilson on 7/10/2025. It is deposed that after the setting aside of the judgment, the respondents have purportedly filed out of time a revised and a purportedly corrected version of the replying



- affidavit without leave, which is impermissible and is an afterthought; it amounts to approbation and reprobation, and is an ambush based on purported new materials or evidence.
3. The applicant deposes that time computation under Order 50 Rule 3 and 8 of the Civil Procedure Rules shows that the 14 days granted to the respondents expired on 1/10/2025, yet the replying affidavit was filed on 2/10/2025 without leave of court.
 4. The applicant deposes that the learned state counsel is negligent and the delay is inexcusable, more so, after being given a second chance to file the affidavit in reply after citing a mistake of not filing and serving the replying affidavit in 2024.
 5. The applicant deposes that introducing revised material post-judgment will prejudice him and the residents of Chepchoina Phase 111, whose interests he represents in these proceedings.
 6. The applicant deposes that he is yet to be served with the affidavit to date, denying him an opportunity to respond to it within 21 days; otherwise, they will suffer irreparable loss.
 7. The applicant relies on written submissions dated 14/0/2025, that the impugned affidavit is a nullity ab initio, it constitutes an abuse of the court process, and it is a revised edition of the original affidavit sworn on 6/12/2024, forming the basis of the settling aside of the judgment.
 8. Reliance is placed on Bsk Global Technologies Ltd -vs- Rural Electrification & Renewable Energy Corporation & Another, Sidian Bank Ltd (IP) 2025 KEHC 13577 [KLR].
 9. The applicant submits that the non-service of the affidavit contravenes Article 47 of *the Constitution* and hence the court should strike out the affidavit under Order 19 Rule 6 of the Civil Procedure Rules.
 10. As to the 21-days period to which he should have filed a supplementary affidavit upon service by the respondents, the applicant submits that the same should be stayed pending the ruling. The applicant submits that justice demands that a party should not be ambushed with time-barred evidence or pleadings.
 11. When this application came up under certificate of urgency on 8/10/2025, directions were issued for the same to be served upon the respondents forthwith and for the respondents to file and serve their responses and submissions.
 12. The affidavit of service of Yvonne Jeruto, sworn on 14/10/2025, confirms that service was effected via email and acknowledged by the respondents, through a return email of the Civil Litigation office, Eldoret, via email address cl.eldoret@ag.go.ke is indicated. It is the address appearing on the replying affidavit by Nyanga Crecencia Atieno, sworn on 29/9/2025. The court finds that the application is not opposed by the respondents by way of either grounds of opposition or a replying affidavit.
 13. Striking out a pleading is a draconian step to be exercised sparingly, as held in D.T.Dobie. & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & Another [1980] eKLR. In Karuria -vs- Kamau Civil Appeal Appl. E134 of 2021 [2025] KECA 365 [KLR (21st February 2025) (Ruling), the court had been called upon to strike out a record of appeal. The court held that the act is a balancing one between the applicant's right to enjoy the fruits of judgment and the respondent's right of appeal. The court found no scales of justice tilting in favour of the applicant.
 14. In Kaduda -vs- Douglas [1981] eKLR, the court said that the responsibility of effecting service to each case is placed on the appellant, and by failing to take steps or apply for extension of time and to regularize the procedural defects, the appellant was negligent.



15. In *Martin Kabaya -vs- David Mungania Kiambi* [2015] eKLR, the court held that the need for judicial proceedings to be concluded in a timely fashion is too plain for argument, as a desideratum of a rational society. The court said that justice that is too long in coming, encumbered by sloth or inattention on the part of those who seek it, is both a pain and a bother. The court further held that when litigants sleep, when the proceedings and processes engaged in them remain alive but comatose, it is a burden to the mind and to the pocket, forming part of the dead weight the judiciary bears as backlog.
16. The filing of the respondents' replying affidavit out of time and without even seeking condonation for the late filing of the papers out of time has not been explained by way of a replying affidavit. The respondents were allowed to explain the reasons for the delay and non-service of the papers to the applicant. They chose not to. The irregularity is self-evident. Court timelines are not made in vain. The window given to the respondents was based on sound reasons, for the document simply required uploading to the case tracking system immediately, leave was granted, for it was already duly signed by its maker in December 2024. The respondents in the ruling for setting aside were simply saying that there was a mistake of counsel in filing or uploading it.
17. This time round, there is nothing on record by the respondents to justify non-compliance with court orders and for no service of the same within the timelines set so that the applicant could file the supplementary affidavit within his 21 days upon service. There is no evidence that the case tracking system during the period was on downtime or was not operational. The applicant has expressed serious prejudice, for this is the second time that the respondents are failing to adhere to the court timelines, which is affecting thousands of residents of the Chepchoina Settlement Scheme Phase III, who are entitled to expeditious justice, after the regular judgment was set aside to accommodate said affidavit by the respondents.
18. Justice delayed is justice denied. Fair hearing includes exploiting an opportunity to be heard and playing by the rules of fair play. Once a party is given an opportunity and squanders it, the only reason to be considered is why they failed to seize the chance. In this application, the why is not answered by the respondents. The casual manner in which the respondents are taking this matter and court directives speaks for itself.
19. Ordinarily, courts have the discretion to allow for late filing where there are good reasons given for not filing the papers on time.
20. The court's discretion is fettered by such reasons or explanations that exist in which the court may overlook the irregularity unless the irregularity works substantial prejudice to the other side.
21. Slackness, ignorance, ineptitude, and cavalier behavior in observance of the rules should not be condoned. Adherence to court timelines is an important element in the machinery of the administration of justice. The court is there to do justice according to the law.
22. The court has inherent powers to do justice to every case and in every circumstance. The court can go out of its way to overlook an irregularity, unless the culprit is out to derail or obstruct the cause of justice. What, in essence, the court is invited to do is to throw away the respondent's reply. Courts have held that they should strive for substantive justice by hearing cases on the merits. A party that simply opts to walk out of the seat of justice cannot be forced to stay or come back; otherwise, a party can opt out of the court, even when the opportunity has been granted.
23. In *Raila Amolo Odinga & Another -vs- Independent Electoral & Boundaries Commission & Others* Petition No. 1 of 2017 eKLR, the court invoked its inherent jurisdiction and exercised judicial restraint when it was called upon to expunge the petitioner's filed documents from the court record, in the interest of justice to all the parties in the petition.



24. In *Independent Electoral & Boundaries Commission -vs- James Cheperenger & Others* [2018] eKLR, the court emphasized the importance of complying with court orders, rules, and practice directions, as regards to filing and service of documents within the requisite time. The court said that Article 159 of *the Constitution* not only dissuades the court from being tied to the ropes of procedural technicalities, but also reminds the court that justice delayed is justice denied.
25. In *Kenya Railways Corporation & 2 others v Okoiti & 3 others* (Petition 13 & 18. (E019) of 2020 (Consolidated)) [2023] KESC 38 (KLR) (Civ) (16 June 2023). (Judgment), the replying affidavit had been filed without leave almost two years after the petition was filed. The court termed the delay inordinate and lacking a plausible justification.
26. In *Kenya Airport Authority -vs- Otieno Ragot & Co. Advocates* Petition Appl. No. E011 of 2023, the court held that compliance with its orders and directions on filing and service of documents was an imperative, which goes to the root of the rule of law as well as the dignity of the court. The court termed the delay in compliance by the appellant prejudicial, as the respondent was deprived of the opportunity to respond to the appellant's submissions.
27. The court said that of major consideration is what prejudice has been suffered by the respondent, due to the failure and timeous filing of the documents and the efforts to mitigate the prejudice. The court also considered whether the respondent could be granted leave to file a supplementary affidavit or if the applicant could still argue the application by relying on the late-filed submissions.
28. In this application, the applicants have narrated how the respondents have prejudiced them by not adhering to court directives to an extent that the court bends backward and sets aside a regular judgment to accommodate them out of mistakes of counsel. The applicants aver that the prejudice is double-edged, for the replying affidavit has now included new materials, which had not been envisaged in the further replying affidavit, which the court said they should file once the replying affidavit was filed within 14 days, and then they could file theirs within 21 days.
29. The applicant urges the court to find that the respondents have no respect for court directives or timelines, hence they have filed the affidavit without leave or seeking an extension of time.
30. The applicant urges the court to also find that there has been no service with the replying affidavit, hence denying an opportunity to know what the affidavit is all about or to file a further affidavit.
31. In *Abdul Aziz Ngoma -vs- Mungai Mathayo & Another* [1976-80] 1 KLR 75, the court said that reasons to consider extending time include sufficient reasons, absence of any prejudice.
32. Sufficient reasons, as held in *Boney Katatumba -vs- Waheed Karim*, Civil Application No. 27 of 2007(unreported), Supreme Court of Uganda, are left to the court's discretion and include the reason that prevented an applicant from taking the essential step in time. In this application, the respondents have not given any sufficient reasons for the delay and or explained the prejudice to suffer if the replying affidavit is struck out. It is not for the court to imagine the reasons why there was a delay, or assume that the respondents intend the court to extend time.
33. The reasons for the procedural lapse have not been stated, service of court processes against the opposite party is cardinal to, and goes to the right to a fair hearing. The court cannot excuse these two irregularities as mere technicalities. See *Godfrey Magezi -vs- National Medical Stores EAC Appeal No. 2 of 2016*.
34. Order 51 Rule 15 of the Civil Procedure Rules still grants the respondents the right to rely on grounds of opposition to oppose the notice of motion.



35. The upshot is I find the replying affidavit sworn on 29/9/2025, filed out of time, without leave, and also not served on time or at all. It is struck out with cost.

36. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant – Dennis

Exparte applicant present

Intended respondent present Jeruto for exparte applicant present

Serebe for intended respondents

Serebe holding brief for Chilaka for 1st – 7th respondents present

HON. C.K. NZILI

JUDGE, ELC KITALE.

