



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI
ELC MISCELLANEOUS APPLICATION NUMBER 823 OF 2013

JANE MUTHONI
NDERITU.....PLAINTIFF/RESPONDENT

VERSUS

GODFREY HINGA GATIRO.....1ST
DEFENDANT/APPLICANT

GEOFFREY KARIUKI MURITHI.....2ND
DEFENDANT/APPLICANT

JOYCE NYAMBURA MACHARIA.....3RD
DEFENDANT/APPLICANT

NAIROBI CITY COUNTY.....4TH
DEFENDANT/APPLICANT

RULING

1. By a Notice of Motion dated 9th April 2025, brought under Order 51 Rule 1 of the Civil Procedure Rules, Article 159(2) (d) of the Constitution of Kenya, and Sections 1A, 1B, and 3A of the Civil Procedure Act, the Applicants seek the following orders:-

- i. THAT the Honourable Court be pleased to vary the orders issued on 11th February 2025 by***

extending time to allow the Applicants to pay the thrown-away costs of Kshs. 200,000/=.

ii. THAT this Honourable Court be pleased to declare the 1st, 2nd, and 3rd Defendant's defence as duly filed.

iii. THAT this Honourable Court be pleased to allow the Applicants to defend the suit as they raise the sum of Kshs 200,000/= and pay for it as throw-away costs.

iv. THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Godfrey Hinga Gatiro sworn on even date.

THE APPLICANTS' CASE

3. The deponent acknowledged that they were ordered to pay thrown-away costs of Kshs. 200,000/= to the Respondent after the interlocutory judgment was set aside. He averred that the 3rd Defendant, who owns the suit property, is 96 years old and was unable to pay the decretal amount within 14 days. He further averred that the 1st Defendant was ill and hospitalized and was therefore unable to pay the amount. He urged the court to allow the application in the interest of justice.

THE RESPONDENT'S CASE

4. The Respondent filed a replying affidavit sworn by Anthony Gakaria, Advocate, on 4th June, 2025, in opposition to the application. He argued that the application is brought in bad faith, lacks merit, and is an abuse of the court process because the Applicants suggest that the orders were binding on the 3rd Defendant. He maintained that the orders were binding on the Applicants jointly and severally, and that their non-compliance was intentional.
5. He further argued that there was a delay in filing the present application without providing any reasonable explanation. He maintained that court orders are not issued in vain, and therefore, the Respondent should be allowed to proceed with execution. He asserted that the Applicants have not met the threshold for the grant of the orders sought.
6. The application was canvassed by way of written submissions. Both parties filed their submissions, which I have duly considered.

ANALYSIS AND DETERMINATION

7. Having considered the application, the respective affidavits, and the rival submissions, the only issue for determination is whether the Applicants are entitled to the orders sought.
8. The Applicants are seeking an extension of time to pay the thrown-away costs. They also seek a declaration that their defence be deemed as duly filed.

9. It is not in dispute that the interlocutory judgment was set aside on the condition that the Applicants pay the Respondent Kshs 200,000/= in costs within 14 days.
10. The Applicants argued that the 3rd Defendant is 96 years old and could not raise the funds within 14 days. Additionally, the 1st Defendant was also ill and hospitalized. As the Respondent correctly pointed out, the ruling was made against the Applicants jointly and severally, not specifically against the 3rd Defendant.
11. I am alive to the provisions of Article 50 of the Constitution, which guarantees everyone's right to be heard. To avoid driving the Applicants from the seat of justice, I will, in the interest of justice, grant the Applicants an additional 14 days to pay the costs. The Defendant's defence will be deemed as duly filed upon payment of the thrown-away costs.
12. In the end, the application dated 9th April 2025 is allowed in the following terms:-
 - a) The time to pay the thrown-away costs is extended to an additional 14 days from the date of this ruling.**
 - b) The 1st, 2nd, and 3rd Defendants' defence is deemed as duly filed upon payment of the thrown-away costs.**
 - c) Costs in the cause.**

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF NOVEMBER, 2025.

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF: -

Gikaria for the Respondent

Mukathe for the Applicants

Indosio holding brief for Kithi for the 4th Defendant.

ORIGINAL