



Azzuri Limited v Ziro ((Sued as the Representative of the Estate of Lawrence K Ziro & 5 others)) (Environment and Land Case 217 of 2014) [2025] KEELC 18473 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18473 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 217 OF 2014
FM NJOROGE, J
DECEMBER 17, 2025**

BETWEEN

AZZURI LIMITED PLAINTIFF

AND

GEORGE KADENGE ZIRO DEFENDANT

(SUED AS THE REPRESENTATIVE OF THE ESTATE OF LAWRENCE K ZIRO & 5 OTHERS)

RULING

1. The 1st and 4th defendants, George Kadenge Ziro (sued as the representative of the estate of Lawrence K. Ziro) and Kadziro Beach Limited have brought the application dated 25th July 2025 and the application dated 8th April 2025 in this matter.
2. The gist of the application dated 8th April 2025 is that the judgment in this case ought to be read again to the parties in open court or on the virtual platform on a date to be notified to all the parties and the CTS record be appropriately amended, presumably to reflect the new date of reading of judgment.
3. That alternatively the time for lodging an notice of appeal be extended and the notices of appeal filed by the 1st and 4th defendants be deemed to have been filed within time.
4. That in the interim the status quo ante obtaining before 16th January 2025 is maintained until the above prayers are granted or refused;
5. The application is promised on the grounds that the 1st defendant happened to know that judgment in this case was read on 16th January 2025 when he was on a routine visited the ELC registry Malindi; that counsel for the applicant accessed the CTS and confirmed that judgment was indeed uploaded and reportedly read on 16th January 2025; that the judge who handled the matter was transferred by that



time and she could not have read the judgment at Malindi on 16th January 2025 as the court was sitting elsewhere; that there is also no evidence that parties were asked to appear before the new judge in the station for the reading of judgment on behalf of the transferred to judge. Also, no notice whatsoever was received notifying the applicants or their counsel that judgment would be read in open court or on the virtual platform; that it is a mandatory requirement that every judgment or ruling is read to the parties in open court or on the virtual platform so that the aggrieved party may seek redress by timely issuance, lodging and service of appropriate processes. He stated that the 1st and 4th defendants have issued Notices of Appeal in abundance of caution lest the judgment was read at the trial judge's new station without notice to the parties; that if the judgment was read without notice to the parties or uploading to the CTS without notice to the parties, then it should be read to the parties afresh, alternatively that time be extended to admit the notices of appeal filed by the applicants to allow them an opportunity to challenge the judgment in the court of Appeal.

6. The 2nd defendant filed grounds of opposition dated 2nd June 2025 stating as follows: that judgment having been delivered on 16th January 2025 it is not open to a party to apply for the judgment to be delivered again; that no legal foundation has been made to justify the ground of an order of status quo ante the 16th January 2025.
7. Anthony Safari Kitsau swore an affidavit in opposition to the application dated 8th April 2025 on behalf of the plaintiff. The response is that the application is frivolous vexatious and devoid of merit and unsupported by the provisions of law, that this court has no jurisdiction to re-issue a judgment once it has been properly delivered; that judgment was procedurally and lawfully entered after all parties were afforded a fair opportunity to prosecute their respective cases in this case; that the applicants have not alleged any irregularity impropriety or procedural injustice in the said judgment; that further no prejudice has been demonstrated and that the application is an attempt to bypass or undermine the procedures for applying for leave to appeal out of time; that the attempt to lodge a notice of appeal outside the statutory prescribed timelines is procedurally flawed.
8. A second application dated 23rd July 2025 was filed by the 1st and 4th defendants. The orders sought in that application are as follows:
 - a. An injunction against the plaintiff restraining it from disposing alienating or otherwise initially for 14 days and thereafter pending the hearing and determination of the application inter partes or until the court renders itself application dated 8th May 2025;
 - b. That after the ruling scheduled for 30th September 2025 and regardless of the outcome of that ruling, the court do preserve and maintain the status quo and obtaining on the date of the expected ruling pending the intended appeal initiated by way of the already filed notices of appeal;
9. These prayers are said to have been sought in order to prevent a multiplicity of applications for stay execution before this court and to afford all the parties and opportunity to pursue the intended appeal in the Court of Appeal.
10. I have examined the file record. Judgment in this matter is dated 16/1/2025. Proceedings indicate it was delivered then. It is clear from the file record that the advocate for the applicants admits that judgment was uploaded on the CTS. There is a judgment in the file and an indication that judgment was transmitted to the advocates for the parties electronically on 16/1/2025. Judgment having been read and uploaded by the judge who heard the matter, there is nothing more in the form of a final decision adjudicating the dispute between the parties to be read in this matter in the light of the fact that our justice system has embraced technology, and all a lawyer has to do is to log into the CTS and find



out what he wants to know, where counsel has admitted that he has seen that judgment uploaded on the CTS, the prayer to have the judgment read afresh is not tenable. It is indeed strange, unworthy and unexpected. The only issue that remains is how the rights of the aggrieved parties regarding the filing of a notice of appeal ought to be handled if they did not promptly know of its posting on the CTS.

11. Justification is needed for extension of time within which to file notices of appeal with regard to the two applicants. The applicants' grievance is that they were not issued with a notice to attend court for judgment. I have examined the court record and found no such notice. There is a probability of truth in the allegation that the applicants and their counsel never knew of the delivery of judgment till they accidentally stumbled on it. The 1st defendant states that he learnt of the judgment on 1st April 2025 when he was instructed by his advocate to go to the ELC registry to find out if the court file had been sent back from Nakuru. I have also found that the court file took inordinately long to reach Malindi ELC registry because it made an unintended detour through Milimani Law courts where it was rerouted to Malindi. The letter acknowledging the receipt of the file at Malindi is dated 29/1/2025. Before that date it is not possible to state that any party could have had an opportunity to peruse the file and learn of the judgment.
12. In view of the foregoing I find that the applicants are entitled to extension of time to file their notices of appeal ex debito justitiae. Accordingly, I grant prayer no 3 of the application dated 8/4/2025 and the notices of appeal dated 8th April 2025 filed by the 1st and 4th defendants herein are deemed as properly filed and served.
13. Having regard to the circumstances outlined earlier in the present ruling and in the interests of justice, I also grant prayer no (iii) in the application dated 23/7/2025 as prayed.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 17TH DAY OF DECEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

