



**Dazzler Properties Limited v Njuguna & 2 others; The Co-operative Bank of Kenya Limited & another (Interested Parties) (Environment and Land Case E088 of 2025) [2025] KEELC 18445 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18445 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E088 OF 2025  
CG MBOGO, J  
DECEMBER 19, 2025**

**BETWEEN**

**DAZZLER PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**IRENE WAMUCII NJUGUNA ..... 1<sup>ST</sup> DEFENDANT**

**LOIS WAMBUI THUO ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**THE CO-OPERATIVE BANK OF KENYA LIMITED ..... INTERESTED PARTY**

**PAFCO LIMITED ..... INTERESTED PARTY**

**RULING**

1. Before this court for determination is the notice of motion dated 8<sup>th</sup> October, 2025 filed by the 1<sup>st</sup> defendant/ applicant, and it is expressed to be brought under the provisions of Sections 1A,1B and 3A of the *Civil Procedure Act*, Order 51 (1) of the Civil Procedure Rules, and Article 159 of *the Constitution* seeking the following orders: -

1. Spent.
2. Spent.
3. Spent.
4. That the honourable court do allow the re-opening of this matter and grant the 1<sup>st</sup> respondent leave to file her replying affidavit out of time in response to



the Plaintiff's Notice of Motion dated 5<sup>th</sup> March, 2025 and further the court do give directions as to the hearing of the matter expeditiously.

5. That the applicant/respondent draft replying affidavit sworn on the 8<sup>th</sup> October, 2025 annexed hereto to the supporting affidavit be deemed as duly filed out of time and served upon payment of the requisite fees, if any.
  6. That this honourable court be pleased to issue any other orders it may deem just and expedient in the interest of justice and fairness.
  7. Costs be in the cause.
2. The application is premised on the grounds on its face, and further in the supporting affidavit of the 1<sup>st</sup> defendant/applicant sworn on even date. The 1<sup>st</sup> defendant/applicant deposed that she recently received a court alert message that a ruling date had been scheduled on 13<sup>th</sup> October, 2025 on a notice of motion dated 5<sup>th</sup> March, 2025. She added that she immediately called her advocate, Mr. Mburu, who confirmed that he had only received a plaint and other court papers other than the notice of motion dated 5<sup>th</sup> March, 2025 stating that he was not aware of any ruling that was set to be delivered.
  3. The 1<sup>st</sup> defendant/applicant further deposed that she instructed the firm of Ochoki & Ochoki Associates who checked on the Court Tracking System (CTS) only to confirm that the firm of Suyianka Lempaa & Co. Advocates had filed a notice of appointment dated 26<sup>th</sup> March, 2025 purporting to be acting for her. The deponent insisted that she had never appointed the said law firm and that she did not even know where their offices were located.
  4. The 1<sup>st</sup> defendant/applicant contended that the plaintiff/respondent has lied under oath that she is in possession of the suit property while also presenting forged title documents. She further contended that the plaintiff/respondent will not suffer any prejudice if the prayers sought are granted. She added that she stands to be condemned unheard contrary to the rules of natural justice when she intends to prove that the plaintiff/applicant has presented before the court forgeries that will mislead the court on the status of the suit property.
  5. The application was opposed vide the replying affidavit of the plaintiff/respondent's director, Peter Kiarie Muraya, sworn on 29<sup>th</sup> October, 2025. The plaintiff/respondent deposed that the 1<sup>st</sup> defendant/applicant was served with its application on 10<sup>th</sup> March, 2025 via email and an affidavit of service was sworn by Antony Mundia on 14<sup>th</sup> March, 2025 to that effect. That again, the 1<sup>st</sup> defendant/applicant was served with a mention notice and a letter via email on 21<sup>st</sup> March, 2025 and an affidavit of service was sworn by Antony Mundia on 27<sup>th</sup> March, 2025 to that effect.
  6. The 1<sup>st</sup> plaintiff/respondent contended that on 24<sup>th</sup> March, 2025, the process server again served the notice of motion dated 5<sup>th</sup> March 2025 upon the firm of Kago Mburu & Associates who confirmed that they had instructions from the 1<sup>st</sup> defendant/applicant to accept service. It was further deposed that the 1<sup>st</sup> defendant/applicant was given sufficient opportunity to respond to the application but failed to do so. Further, that the 1<sup>st</sup> defendant/applicant had not demonstrated any exceptional circumstances under which the court could arrest the scheduled ruling. It was suggested that if the 1<sup>st</sup> defendant/applicant was to be aggrieved by the court's ruling, then the appropriate remedy would be to seek review.
  7. The 1<sup>st</sup> plaintiff/respondent deposed that it has been deprived of the use and enjoyment of the suit property by the 1<sup>st</sup> defendant/applicant and will suffer extreme prejudice noting that the scheduled



ruling has been adjourned more than three times. He urged the court to dismiss the application with costs.

8. The application was canvassed by way of written submissions. By the time of writing this ruling, the plaintiff/respondent and the 1<sup>st</sup> defendant/applicant had not filed their written submissions. While the 1<sup>st</sup> interested party did not file a response to the application, it filed its written submissions dated 9<sup>th</sup> December, 2025. The 1<sup>st</sup> interested party submitted that it would rely on the replying affidavit of the plaintiff/respondent. In its submissions, two issues were raised for determination as follows: -
  - a. Whether the 1<sup>st</sup> Defendant was served with the Plaintiff's application dated 5<sup>th</sup> March, 2025?
  - b. Whether the 1<sup>st</sup> Defendant is entitled to the equitable remedies sought?
9. Submitting on the first issue, the 1<sup>st</sup> interested party contended that proper service of the application dated 5<sup>th</sup> March, 2025 was effected on the 1<sup>st</sup> defendant/applicant as per Order 5 of the Civil Procedure Rules. Further, that the instant application is based on falsehoods and that it is a clear attempt to waste judicial time.
10. On the second issue, it was submitted that the 1<sup>st</sup> defendant/applicant had not fulfilled the considerations which can allow the court to grant the application, and that she has come to court with unclean hands and was undeserving of the court's discretion. Urging the court to dismiss the application with costs, it was submitted that no satisfactory reasons had been advanced.
11. After a careful perusal of the application, the replying affidavit and the 1<sup>st</sup> interested party's submissions, the sole issue for determination is whether the court should grant the 1<sup>st</sup> defendant/applicant leave to file a replying affidavit to the application dated 5<sup>th</sup> March, 2025 out of time.
12. Enlargement of time is a discretionary power vested with this court in accordance with the provisions of Section 95 of the *Civil Procedure Act* which outline as follows: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”
13. The principles to be considered in an application for extension of time were laid out by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:-

“...it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.

This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:

  1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;



3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay;...”
14. Being a discretionary power, the Court of Appeal observed as follows in *CMC Holdings Ltd v James Mumo Nzioki* [2004] eKLR with regard to the setting aside of ex-parte orders: -
- “Our view is that in law, the discretion that a court of law has, in deciding whether or not to set aside ex parte order such as before us was meant to ensure that a litigant does not suffer injustice or hardship as a result of among other things an excusable mistake or error. It would in our mind not be a proper use of such a discretion if the court turns its back to a litigant who clearly demonstrates such an excusable mistake, inadvertence, accident or error. Such an exercise of discretion would in our mind be wrong in principle.”
15. The Court of Appeal went on further to state as follows: -
- “The law is now well settled that in an application for setting aside ex parte judgment, the court must consider not only reasons why the defence was not filed or for that matter why the applicant failed to turn up for hearing on the hearing date but also whether the applicant has reasonable defence which is usually referred to as whether the defence is filed already or if a draft defence is annexed to the application, raises triable issues.”
16. In *Shah v Mbogo* [1967] EA 116 at 123B Harris J, judiciously held as follows:-
- “This discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”
17. The 1<sup>st</sup> defendant/applicant explained her reason for not filing a replying affidavit to the plaintiff’s application as being that her advocates Kago & Mburu were not served with the same. The 1<sup>st</sup> defendant/applicant also denounced the fact that she had instructed the law firm of Suyianka Lempaa & Company advocates to represent her in these proceedings by virtue of the notice of appointment dated 26<sup>th</sup> March, 2025.
18. She contended that thereafter, she instructed the firm of Ochoki & Ochoki Associates to file a notice of change of advocates which they did on 19<sup>th</sup> August, 2025. It is her case that she will be condemned unheard in the event that the application herein is disallowed.
19. In support of the application, the 1<sup>st</sup> defendant/applicant annexed a copy of her draft replying affidavit to the plaintiff/respondent’s application which she contends that it will comprehensively and effectively assist the court in reaching a just determination. Even though the plaintiff/respondent opposed the instant application arguing that it is made on the basis of falsehoods, it is indisputable that the court cannot obstruct the right of a litigant who has demonstrated willingness to be heard. Again,



the plaintiff/respondent has not demonstrated any prejudice that cannot be sufficiently compensated by an award of costs if the orders sought herein are granted.

20. The Court in *George Kianda & another v Judith Katumbi Kathenge & another* (2018) eKLR aptly held as follows: -

“The respondent has not stated that she cannot be adequately compensated in costs for any prejudice that she may suffer as a result of a favourable exercise of discretion in favour of the applicant. It has been said there is one panacea which heals every sore in litigation and that is costs. Seldom, if ever, do you come across an instance where a party has made a mistake which has put the other side to such advantage or that it cannot be cured by the application of that healing medicine. See *Waljee’s (Uganda) Ltd vs. Ramji Punjabhai Bugerere Tea Estates Ltd* [1971] EA 188.”

21. Accordingly, after thorough analysis of the application, the 1<sup>st</sup> defendant/applicant has satisfactorily explained her reasons for failing to file a replying affidavit to the plaintiff’s application. She has also demonstrated her willingness to effectively assist the court in reaching a fair determination of the case expeditiously by filing a draft replying affidavit.
22. For that reason, the notice of motion dated 8<sup>th</sup> October, 2025 is merited, and it is hereby allowed in terms of prayers 4 and 5. The plaintiff/respondent is awarded the costs of this application. The same is assessed at Kshs.30,000/-.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**19/12/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Jeruto holding brief for Mr. Langat for the Plaintiff

Mr. Sausi for the Defendant/Applicant

Mr. Machua holding brief for Ms. Gichuhi for the 1<sup>st</sup> interested party

