



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of William W M alias W M W alias W M (Deceased) (Succession Cause E016 of 2023) [2026] KEHC 758 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEHC 758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE E016 OF 2023
DKN MAGARE, J
JANUARY 27, 2026**

**IN THE MATTER OF THE ESTATE OF W M W ALIAS W M W ALIAS M WW ALIAS W M
(DECEASED)**

RULING

1. This matter sounds more than two thousand seasons, where every season has its own dynamics. On 1.9.2025, the applicant sought the following orders:
 - a. The Honourable Court be pleased to enlarge the time granted on 9.06.2025 for the applicants to file a supplementary affidavit from 25.06.2025 to such further period as the Court may deem just.
 - b. The applicants be granted leave to file a supplementary affidavit and supporting documents to matters admitted into proceedings and arising from the witness statement of the 1st protestor/respondent.
2. The grounds were that the first protestor's witness statement was admitted out of time as part of the proceedings, and the applicant granted leave to file a supplementary affidavit by 25.6.2025. This was not done due to factors beyond the applicant's control. These factors were not named. It was also said to be inherent powers of this court under rules 73 and 67 of the Probate and Administration Rules, as read with section 47 of the *Law of Succession Act*. The document to be filed was described as a detailed expenditure statement prepared by Salome Mathangani. Annexed to it was a 31-paragraph supplementary affidavit. The same covered new grounds, that is:
 - a. Shares in EABL
 - b. Plots from the estate of the late Senior Chief W M, that is, plot number 5564- Aguthi Gatitu and Plot Number 5530- Aguthi Gatitu, measuring 0.1 ha and 0.58 ha respectively.
 - c. The role of each of the administrators.
3. The applicant was granted leave to file a supplementary affidavit by 25.06.2025, but could not do so due to circumstances beyond their control. The court was said to have jurisdiction under article 50(1)



and was granted leave. The court did not find the application urgent. The application was slated for directions on 9.10.2025, when the matter was slated for hearing. On the hearing date of 9.10.2025, I made a second Ruling on this matter and stated as follows:

The court is faced with a situation where it gave time to one party to file documents and granted leave to do so by a certain date. Whether this was done is a matter for the extempore ruling I made earlier on 11.06.2025. The last witness I slated to complete cross-examination today. The question then is what the court will do in order to make justice not only be done but be seen to be done.

Therefore, there must be time for the court to have all the facts placed on the record before it exercises discretion. This does not affect the pending hearing in any way. In the end, I find it prudent not to disturb the hearing for today. The hearing will continue. After the cross-examination today, the court will give directions on the hearing of the application dated 1.10.2025. Thereafter, the court will give directions in the ruling itself on the way forward.

4. Upon hearing witnesses, for that day, I directed to Ms W and Mr Kimano file their clients' responses together with submissions by 21.10.2025. Ms Muigai, on behalf of the applicant, was to file any further affidavits by 30.10.2025. I gave a date for directions of 19.11.2025. I slated the matter for ruling today and gave a hearing date of 10.03.2026. Mr Ombongi indicated that he was not opposing the application.
5. The second respondent filed an affidavit dated 21.10.2025. It is accompanied by an affidavit of a commissioner for the oath that she commissioned the affidavit via Zoom call. There is also a notice of withdrawal of a replying affidavit. This is of no consequence, as an affidavit is not a pleading to be withdrawn. They stated that the application was meant to conceal real issues in controversy. The deponent stated that he had already been cross-examined. If the application is allowed, there may be a need to file additional supplementary affidavits, cross-examine the deponent, and examine the original documents, as the annexed documents are not legible.
6. It was his case that when the shoe was on the other side, the applicant squeezed him. Therefore, what is good for the goose is equally good for the gander. He concluded that the delay was not explained.
7. The applicant filed submissions dated 30.10.2025. They submitted that the court has discretion to enlarge time. They stated that the delay was not inordinate, given that the court had unfettered discretion. Reliance was placed on the case of *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others* [2014] ECLR.
8. Further reliance was placed on the case of *Hajar Services Limited v Peter Nyangi Mwita* [2020] KEHC 4652 (KLR), where G V ODUNGA, posited as follows:

2. I also associate myself with the decision of the Supreme Court in Civil Application No. 3 of 2016 - *County Executive of Kisumu –vs- County Government of Kisumu & 7 Others* at page 5 where the said Court said: -

“... 23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the court. Further, this court has settled the principles that are to guide it in the exercise of its discretion to extend time in the *Nicholas Salat* case to which all the parties herein have relied upon. The court delineated the following as:-

“The underlying 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-by-case basis.
 - 4) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
9. They submitted that the first respondent will not suffer prejudice as the court has the power to recall witnesses. They explained, in response to the second respondent, that the delay was due to their inability to access the documents. They concluded that the case of *Dardanelli & 6 others v Tilito & 3 others* [2025] KEELC 392 (KLR), relied on by all the respondents, was irrelevant to the matter at hand, as it dealt with electronic records.

Analysis

10. The court has maintained a very consistent view of the role of parties during mentions to confirm compliance. This is the period when all sins are confessed and reparations made. A party that does not note its default and only ambushes parties at the hearing is frowned upon. For example, in the first ruling, it stated as follows:
- The documents were filed late. The witness statement, however, does not substantially change the matters raised in the protest. Consequently, leave is granted to the extent only as it relates to documents already filed by 21/5/2025 before the last mention. The Applicant shall have the liberty to file a further affidavit to respond to any new issues.
- Secondly, documents filed on 4/6/2025 are meant to ambush the parties. They are accordingly expunged from the record.
11. The matter had been mentioned on 26.05.2025. Parties filed documents before the mention, and no issue was raised. When the matter was mentioned, newer documents were filed without leave. These were expunged. The applicant was granted leave to respond to any new issues raised. They did not do so. The matter was in court next on 09.06.2025, 10.06.2025, and 11.06.2025. The Respondent's case was concluded.
12. The applicant started her case on 11.06.2025 and was subjected to cross-examination. The same was completed on part of Wambugu. Mr. Kimamo started cross-examining him. Time ran out at 1333 hours, where DW1 was stood down to 11.6.2025. On 1.10.2025, an application dated 1.10.2025 was filed, resulting in the directions being given on 02.10.2025.
13. On the hearing date, parties were reeling to go on the application and were tearing each other down. I calmed nerves and took a short pause to deliver a ruling giving directions, hence my ruling number 2.
14. DW1 was heard in further cross-examination and stood down. I gave directions for today's ruling.
15. The matter raises only one question, that is, whether the application is merited. It is not lost on the parties that, on Ms Tibira and Muigai's vehement objections, documents that were filed late were expunged from the record on 9.06.2025. A short leave was given to respond to the same. Ms Wambugu,



- then beseeched the court to allow parties assist the court in bringing all documents to assist in the determination of issues in controversy. I overruled the respondents and expunged the documents filed late and admitted the limited documents filed early enough.
16. The matter has substantially proceeded. The issue of the estate of late Senior Chief W M does not affect the will, which is the underlying document. It is not lost on the court that both the applicant and the first respondents are administrators. The issues raised do not fall on either side. Others are entirely new issues that were not raised.
 17. Extension of time was settled by the Supreme Court of Kenya (M.K. Ibrahim & S.C. Wanjala SCJJ) in the case of Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] eKLR where the learned Judges held as follows:
 - “(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 reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 18. The orders given for the filing of documents were pretrial directions. The trial has taken place. The court cannot extend pretrial directions after the trial. Consequently, the first prayer is declined. The second prayer is independent of the first. Can the court grant leave to file a supplementary affidavit out of time?
 19. The matter was in court four times. The matter came before the court without the applicant indicating any difficulties in securing the documents. I have seen the documents annexed to the draft supplementary affidavit. Some documents could not be said to be beyond the beneficiaries' reach.
 20. I find that the application to file a supplementary affidavit was an afterthought meant to fill any gaps they may have perceived during the hearing. The court does not wish to comment further than these on the hearing, which is at the tail end, save to add that the documents sought to be adduced do not in any way affect the hearing. they are meant to confuse the hearing without adding value. In the circumstances, I do not find the application meritorious. Pleadings closed eons ago.
 21. The application is accordingly dismissed. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:
 - “It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter, with the usual caveat being that such discretion should be exercised judiciously, meaning without caprice or whim, and on sound reasoning secondly, that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.
 22. The best order is that each party bear their own costs. The hearing will proceed as scheduled until completion.



**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 27TH DAY OF JANUARY, 2026.
RULING DELIVERED PHYSICALLY IN OPEN COURT**

KIZITO MAGARE

JUDGE

In the presence of:-

Ms. Muigai for the 1st Administrator.

Mr. Mugo for Ms. W for the 2nd Protestor.

Mr Kimamo for the 1st protestor.

Court Assistant – Michael

