



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC JR CASE NO. 9 OF 2017

REPUBLIC.....

APPLICANT

=VERSUS=

MAARA DISTRICT LAND

**DISPUTES TRIBUNAL..... 1ST
RESPONDENT**

**THE ATTORNEY GENERAL..... 2ND
RESPONDENT**

**FRORENCE GAAJI M'RIMUNYA.....INTERESTED
PARTY**

M'MUGAMBI M'RIMUNYA.....EX-PARTE

APPLICANT

RULING

1. This judicial review case was filed at Meru Environment and Land Court on 12/9/2013 as **Meru ELC JR Case No 24 of 2013**. The case was transferred to Chuka Environment and Land Court in 2017 and registered as **Chuka ELC JR Case No 9 of 2017**. Between 17/11/2016

and 18/4/2018, no steps were taken by the ex-parte applicant, **M'Mugambi M'Rimunya** (*hereinafter referred to as "the deceased"*), to prosecute the case. Consequently, on 18/4/2018, this Court (**P M Njoroge J**) issued an order directing the Court Registry to issue and serve a notice to show cause why the suit should not be dismissed for want of prosecution. The notice to show cause was listed for consideration on 10/5/2018. None of the parties attended Court on 10/5/2018. Consequently, the Court (**P M Njoroge J**) dismissed the case vide a brief ruling dated 10/5/2018.

2. More than seven (7) years later, the estate of the deceased ex-parte applicant, through **Elizabeth Bere Mugambi** and **Osward Mugendi Kinyua**, brought an application dated 20/9/2025, seeking the following orders: (i) an order allowing **M/s D M Nyagah Advocates** to come on record as the advocates for the ex-parte applicant; (ii) an order substituting the duo in place of the deceased; (iii) an order setting aside the dismissal order dated 10/5/2018; (iv) an order reinstating the suit; and (v) a conservatory order relating to **Chuka CMC Succession Cause No E163 of 2022**. The said application is the subject of this ruling.
3. The application was premised on the grounds outlined in the motion; in the supporting affidavit sworn on 20/9/2025 by **Elizabeth Bere Mugambi**; and in the same deponent's supplementary affidavit dated 14/10/2025. It was canvassed through written submissions dated

17/10/2025 and supplementary submissions dated 26/11/2025, filed by **M/s D M Nyagah Advocates**.

4. The case of the estate is that the deceased's advocates did not inform the deceased that they were unable to attend court at Chuka Environment and Land Court following the transfer of the case from Meru Environment and Land Court. They add that the deceased was unaware of the notice to show cause because the said notice was served on his advocates.
5. The estate adds that the deceased was unwell from 2013 up to the time of his demise in 2020, hence his inability to attend court and prosecute the case. The estate further states that the deceased's kin were unaware of the case and were therefore unable to prosecute it on his behalf. The estate adds that the non-attendance on 10/5/2018 was "accidental and on account of illness rather than deliberate"
6. The estate points out that the interested party has moved the Succession Court seeking a revocation of the Grant which they had obtained in relation to the estate of the deceased and in which the suit land, **Mwimbi/Chogoria/2114**, had been distributed. They add that unless the court grants the conservatory orders, an illegal award will be implemented.
7. The respondents opposed the application through grounds of opposition dated 27/10/2025 and written submissions dated 22/11/2025, filed by **Ms E. Kendi, Senior Litigation Counsel, Office of the Attorney**

General. They contend that the application is fatally defective, misconceived, mischievous and an abuse of the process of the court. They add that the application does not meet the requisite threshold for the orders sought, pointing out that there has been inordinate and unexplained delay in bringing the application and that the estate has failed to explain why the deceased failed to prosecute the suit and why they took 7 years to bring the application. The respondents add that the application which the estate seeks to reinstate offends **Section 9 (3)** of the **Law Reform Act** because the award/judgment of the Tribunal which it seeks to quash was rendered on 12/3/2009 and the judicial review proceedings seeking the quashing orders were initiated on 26/8/2013 outside the prescribed statutory limitation period of 6 months. They urge the court to reject and dismiss the application.

8. The interested party opposed the application through her replying affidavit dated 9/10/2025 and written submissions dated 24/11/2025, filed by **C K Mutegi & Co Advocates**. Her case is that the application is frivolous, vexatious and an abuse of the court process. She adds that the application was brought in bad faith and is an exercise aimed at wasting valuable judicial time.
9. The interested party faults the estate for misleading this court on the factual history of this suit, pointing out that the land dispute between her and her deceased brother, the late **M'Mugambi M'Rimunya**, was conclusively determined by the Maara District Land Disputes Tribunal in **Maara District LDT Case No 2 of 2009** in her favour

and the award of the Tribunal was adopted by the **Chuka Senior Principal Magistrate Court** in **Chuka SPMC LDT Case No 25 of 2009**.

- 10.** The interested party adds that subsequently, the deceased filed **Meru ELC JR Case No 24 of 2013** which was subsequently transferred to Chuka ELC and registered as **Chuka ELC Case No 9 of 2017**. She adds that the case was subsequently dismissed on 10/5/2018 for want of prosecution. The interested party argues that the allegation that the deceased's advocate failed to communicate with the deceased is an insufficient explanation for a 7 year delay, adding that even as late as 12/8/2025 the estate was aware of the dismissal order and did not bother to move the court expeditiously despite making reference to the dismissal order in an affidavit sworn on 12/8/2025 and filed in **Chuka CMC Succession Cause No 163 of 2022**.
- 11.** The interested party further argues that the conduct of the deceased disentitles the estate to the reliefs sought, pointing out that, if the deceased was unwell from the year he filed the case (2013), he had the option of appointing a representative and applying for substitution to facilitate expeditious prosecution of the case.
- 12.** The interested party faults the medical documents relied on by the estate, pointing out that the medical report is dated 19/9/2025. He adds that the medical receipts relied on relate to one **Sebastian Mutegi** who was a patient in the Maternity Ward at Chogoria Hospital. Counsel points

out that none of the medical documents indicates that the deceased lacked cognitive capacity to manage his affairs or to instruct an advocate to apply for substitution. She urges the court to dismiss the application.

- 13.** The court has considered the application, the responses to the application and the parties' respective submissions. The plea for change of advocates was granted on 28/10/2025. At this point, the plea is spent. The issues that fall for determination in the application are: (i) Whether the estate of the deceased has made out a case for substitution of the deceased by the two administrators of his estate; (ii) Whether the application satisfies the criteria for reinstating a suit dismissed for want of prosecution; and (iii) Whether a case has been made out for issuance of a conservatory order relating to **Chuka CMC Succession Cause No E163 of 2022**.
- 14.** Has the estate made out a case for substitution of the late **M'Mugambi M'Rimunya** with the administrators of his estate? The late **M'Mugambi M'Rimunya** was the ex-parte applicant in this judicial review cause. He is said to have died on 20/1/2020 at Chuka Hospital. His estate initiated succession proceedings and a grant was issued on 14/1/2025 to **Osward Mugendi Kinyua, Beatrice Kambura Mwilaria** and **Elizabeth Bere Mugambi**. The grant has not been revoked. What has been contested in the succession court is the distribution of the whole of land parcel number **Mwimbi/Chogoria/2114** as the absolute property of the late **M'Mugambi M'Rimunya** (the deceased). The interested party is a sister of the

deceased and contends that the suit land is ancestral land that belonged to their late father (*the late senior M'Rimunya*) and that as an unmarried woman, she is entitled to a one-acre portion of the land. She has gone to the Succession Court waving the judgment/award of the Maara Land Disputes Tribunal in which the Tribunal found that, as an unmarried daughter of the late senior **M'Rimunya**, she was entitled to one acre out of the family land.

15. In their response to the application, the respondents and the interested party did not contest the plea for substitution of the deceased ex-parte applicant. Their responses and their submissions focused on the plea for reinstatement of the suit. In the circumstances, the court finds that the estate has made out a case for substitution of the deceased ex-parte applicant by the two administrators of his estate.
16. Does the application meet the criteria for reinstatement of a suit dismissed for want of prosecution? The jurisdiction to reinstate a suit dismissed for want of prosecution is a discretionary one. The discretion is, however, exercised on the basis of well settled principles. The Court of Appeal for East Africa in ***Shah v Mbogo & another 91967) EA 116*** outlined the following general principle on exercise of discretionary jurisdiction.

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from in adventure or excusable

mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice”

- 17.** One of the policy considerations that guide our courts when exercising this discretionary jurisdiction is the need for expeditious disposal of cases. In ***Mobile Kitale Service station v Mobil Oil Kenya Limited & another [2004] eKLR*** the Court stated as follows:

“I must say that the courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/or negligence of the plaintiff. That negligence, indifference, and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”

- 18.** The suit which the applicant seeks to reinstate was a judicial review application that challenged the judgment/award of the Maara District Land Disputes

Tribunal, rendered on **12/3/2009** in **Maara LDT Case No 2 of 2009**. The judicial review proceedings were commenced on **26/8/2013** through a chamber summons application of even date. Upon obtaining leave, the ex-parte applicant filed a substantive motion dated 30/6/2013 in which he sought, *inter alia*, an order annulling the proceedings and award/judgment of the Tribunal.

- 19. Section 9 (3) of the Law Reform Act** provided and still provides a limitation period of six months within which judicial review proceedings seeking the annulment of a judgment or award of a tribunal or a subordinate court must be initiated. This cause was initiated on 26/8/2013 when the application for leave was filed. This was more than 4 years after the award/judgment of the Tribunal. Even if this court were to reinstate this suit, clearly, the court will not have jurisdiction to entertain the suit because it was, and it still is, statute-barred under **Section 9 (3) of the Law Reform Act.**
- 20.** Has the estate tendered satisfactory explanation for the delay? The court has considered the explanation tendered for the delay in prosecuting the cause between 2013 and 2018. This is a period of 5 years, which is an inordinate duration for a judicial review motion. The estate contends that the deceased was unwell during the above period. The only evidence they tendered to support the above allegation is the medical report dated 19/9/2025 which shows that the deceased was admitted at PCEA Chogoria Hospital on 6/8/2013 and was discharged on 22/9/2013.

This means that, while admitted in hospital, the deceased was able to swear the affidavit dated 26/8/2013 which accompanied the chamber summons through which the deceased sought leave to initiate the judicial review proceedings. It was also during the same period of the alleged hospital admission that the deceased was able to file the substantive motion. There was no evidence of any other subsequent admission. If the deceased was able to initiate proceedings while in hospital, no proper explanation has been tendered to account for his failure to prosecute the suit for over 5 years. No proper explanation has been tendered to account for his failure to apply for substitution during his lifetime on account of failing health.

- 21.** The suit was dismissed on 10/5/2018. The deceased died on 20/1/2020. No proper explanation has been tendered to account for the deceased's failure to apply for reinstatement of the suit during the above period.
- 22.** Even after the deceased died on 20/1/2020, for more than 5½ years, his estate did not bother to apply for reinstatement of the suit. What prompted them to bring the present application was the interested party's application in the Succession Court challenging the distribution of the whole of the suit land without making provision for her one acre.
- 23.** From 10/5/2018 (*the date when the suit was dismissed*) to 23/9/2025 (*the date of filing the present application*) is a period of more than 7 years. This is inordinately long. No

satisfactory explanation has been tendered to account for the delay. Consequently, for the above reasons, the court finds that the application does not meet the criteria for reinstating a suit dismissed on the ground of want of prosecution.

- 24.** Have the applicants made a case for grant of a conservatory order relating to **Chuka CMC Succession Cause No 163 of 2022**. First, the above relief is not available to the estate on the platform of this case because the case was dismissed and has not been reinstated. Secondly, the plea is framed in general terms and does not specify what it is that is supposed to be conserved. A court of law properly directing itself would not issue an order that lacks specifics such as prayer 7 of the notice of motion dated 20/9/2025.
- 25.** On costs, the general principle is that costs follow the event. There are no special circumstances to warrant a departure from the above general principle.
- 26.** In light of the above findings, the application dated 20/9/2025 is disposed as follows:
 - a) The plea for substitution is allowed.***
 - b) The other prayers in the application including the plea for reinstatement of the suit are rejected.***
 - c) The estate of the late M'Mugambi M'Rimunya shall bear costs of the application.***

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH
DAY OF JANUARY, 2026.**

B M EBOSO [MR]

JUDGE

In the Presence of:

Ms. Mwangi for the Applicant.

Mr. Mwenda Kathenya for the Respondents.

Ms. Mutegi for the Interested Party

Court Assistant - Nelly

ORIGINAL