



**Chelugot (Suing as the Administrator of the Estate of David Kiptoo
Chelugot - Deceased) v Chelugot & 2 others (Environment and Land Case
115B of 2020) [2026] KEELC 518 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 115B OF 2020
CK YANO, J
FEBRUARY 5, 2026**

BETWEEN

**HELLEN CHEPKOECH CHELUGET (SUING AS THE ADMINISTRATOR OF
THE ESTATE OF DAVID KIPTOO CHELUGET - DECEASED) PLAINTIFF**

AND

ABRAHAM KIPRUTO CHELUGET 1ST DEFENDANT

JOHN KIPKEMBOI CHELUGET 2ND DEFENDANT

**MIKE KIPKORIR CHELUGET & LYNN CHEROP CHELUGET (SUING AS THE
ADMINISTRATOR OF THE ESTATE OF JEMAIYO ANNA CHELUGET ALIAS
ANNA CHELUGET - DECEASED) 3RD DEFENDANT**

RULING

1. This ruling relates to two applications, the first brought by the 1st and 2nd Defendants, while the second is brought by the Plaintiff herein.

A. Notice of Motion dated 29th September, 2025;

2. In the Notice of Motion dated 29th September, 2025 the 1st and 2nd Defendants/Applicants moved this court seeking orders:-
 1. That the Amended Plaint dated 24th July 2025 and filed by the Plaintiff on 24th July 2025 be struck out for having been filed outside the period prescribed by the Honourable Court in its order dated 15th May, 2025 and without leave.
 2. That any other or further orders the Court may deem fit and just to grant.
 3. That costs be in the cause.



3. The grounds pleaded in support of the Application are set out in the Motion as well as a joint Supporting Affidavit of even date sworn by the 1st and 2nd Defendants. They deponed that on 15th May, 2015 this court ordered the Plaintiff/Respondent to file and serve an Amended Plaintiff not later than 30 days from the said date to reflect the substitution of the deceased Plaintiff to Hellen Chepkoech Cheluget.
4. The 1st and 2nd Defendants claim that the Plaintiff did not comply and instead irregularly filed an Amended Plaintiff on 24th July, 2025 outside the 30-day period allowed by this court and without leave. They thus claim that the Amended Plaintiff is incompetent, irregular and a blatant abuse of the court process. They aver that unless it is struck out, they will be greatly prejudiced by being compelled to respond to an irregular pleading filed in disregard of clear court orders, thus it is in the interest of justice that the orders sought be granted.
5. Hellen Chepkoech Cheluget filed a Replying Affidavit dated 21st October, 2025 opposing the Application. She averred that the Defendants are not deserving of the orders sought and termed the Application fatally and incurably defective and ought to be struck out. She averred that upon the death of the deceased Plaintiff, she applied to be substituted under Order 24 Rules 3 and 7 of the [Civil Procedure Act](#). That the application was allowed vide ruling dated 15th May, 2025 directing her to file an amended Plaintiff within 30 days to reflect the substitution, as well as the addition of the Estate of Anna Cheluget as the 3rd Defendant.
6. The Plaintiff averred that she diligently pursued compliance with the orders of the court, but she had to first cite the Defendants to take out a grant of administration over the estate of the late Anna Cheluget, their deceased mother. She claimed that she was not aware a personal representative had been appointed in the said estate and since the Defendants failed to disclose to her that they had already filed a Petition for Grant Ad Litem, she had to pursue Citation proceedings, hence the delay in complying with the orders.
7. The Plaintiff deponed that after resolution of the citation proceedings, she prepared and filed the Amended Plaintiff on 24th July, 2025 per the court's directions. She averred that the delay in filing the Amended Plaintiff was not due to negligence on her part, but the deliberate concealment by the Defendants regarding the status of representation of the estate. She alleged that her actions were guided by prudence and procedural compliance and urged the court to uphold the overriding objectives set out at Sections 1A, 1B and 3A of the [Civil Procedure Act](#) as well as Article 159(2) on administering justice without undue regard to procedural technicalities.
8. The Plaintiff asked the court to disregard the Defendants' application. The Plaintiff further asked that the Defendants not be allowed to benefit from their deceit and unfair conduct. The Plaintiff claimed that the Defendants will suffer no prejudice since all the parties are now on record and asked that the matter be allowed to proceed to full trial on merits. She averred that the Amended Plaintiff reflects her good faith, diligence and adherence to court orders. She asked that the Defendants' application be dismissed with costs.
9. In response to the Replying Affidavit, the 1st and 2nd Defendants filed a joint Further Affidavit dated 4th November, 2025 where they deponed that the court imposed a 30-day mandatory deadline to file the Amended Plaintiff. That on her failure, the court ordered the plaintiff to show cause no later than 14th October, 2025 why she had not complied with the timeline, which she failed to do, demonstrating procedural indiscipline and undermining the court's authority.
10. They pleaded that they filed for letters of administration on 4th April, 2025 and the Plaintiff had ample time to verify the status of the estate through the Court Registry and act within the stipulated



timeframe. They averred that the citation was served on them on 26th June, 2025 after expiry of the 30-day period. They pointed out that the Plaintiff failed to seek an extension of the deadline upon its expiry. They denied any culpability in the delay or the alleged concealment of facts, and asserted that the delay was due to non-compliance on the part of the Plaintiff.

11. The 1st and 2nd Defendants further averred that the irregular Amended Plaintiff is fatal, incompetent and an abuse of the court process, and the court has jurisdiction to strike it out so as to enforce the spirit of the Court's orders, which will serve the overriding objectives. They urged that the citation proceedings, being of the Plaintiff's choice, cannot be used to excuse the breach of a direct court order. They claimed that the Plaintiff acted unilaterally and in disregard of the orders, rendering the Amended Plaintiff incompetent and irregular from its inception. They thus asked that the Amended Plaintiff be struck out for being an irregular pleading.

B. Notice of Motion dated 25th November, 2025

12. The second Application dated 25th November, 2025 is by the Plaintiff herein and she seeks the following orders:-
 - a. Spent
 - b. Spent
 - c. This Honourable Court be pleased to extend the time for the Plaintiff to file and serve the Amended Plaintiff dated 23-07-2025, and that the Amended Plaintiff dated 23-07-2025 and filed on 24-07-2025 be deemed as properly filed and served notwithstanding the expiration of the period originally prescribed or ordered by the court in its ruling delivered on 15-05-2025.
 - d. The Amended Plaintiff dated 23-07-2025 and filed on 24-07-2025 filed out of time be deemed as duly filed and properly on record, with all necessary consequential directions as the court may deem just.
 - e. That the costs of and incidental to this application be provided for in the cause.
13. The Motion is supported by an Affidavit of even date sworn by the Applicant, Hellen Chepkoech Cheluget. She deponed that on 15.05.2025, the court directed that the name of the late David Kiptoo Cheluget be substituted with that of Hellen Chepkoech Cheluget and that the Estate of the late Anna Cheluget be joined to the suit, and gave the Applicant herein 30 days to comply. She deponed that delay in filing the Amended Plaintiff was neither deliberate nor contemptuous, but was caused by bona fide circumstances which prevented timely compliance.
14. She reiterated that there was deliberate concealment and misrepresentation of material facts relating to the appointment and status of Administrators in the estate of Jemaiyo Anna Cheluget alias Anna Cheluget. The Applicant further reiterated the process outlined in her Replying Affidavit dated 21st October, 2025 summarised above on leading to her obtaining information on the status of the Estate of Anna Cheluget. The Applicant deponed that she at all times acted in utmost good faith, and on obtaining the required information of representation, prepared the amended pleadings for filing.
15. The Applicant averred that the amendments are material and necessary for the full determination of all the questions in controversy between the parties herein. The Applicant argued that the Plaintiff stands to suffer grave prejudice if the Amended Plaintiff is struck out, while the Defendants will suffer no corresponding prejudice that cannot be compensated by damages. She cited Sections 1A, 1B and 3A of the Civil Procedure Act as well as Articles 48, 50(1) and 159(2)(d) of the Constitution and averred that



justice must be administered without undue regard to procedural technicalities. She claimed that it is in the interest of justice, equity and fair hearing that the orders sought in her application be allowed.

16. The Applicant acknowledged that the Amended Plaint was filed 40 days after the expiry of the 30-day period, but alleged that she had provided sufficient and excusable reasons for the delay. The Applicant reiterated the averments at paragraph 21 of her Replying Affidavit dated 21st October, 2025 and urged the court to disregard the Defendants' Application seeking to strike out the Amended Plaint. The Applicant alleged that the delay was caused by the Defendants' concealment and non-disclosure of material facts, with respect to the representation of the Estate of Jemaiyo Anna Cheluget alias Anna Cheluget, and they should not be allowed to benefit from their deceit. She concluded by stating that the delay of 40 days is neither inordinate nor prejudicial to the Defendants.
17. The 1st and 2nd Defendants filed a joint Affidavit stating that the issues raised in the Plaintiff's Application are the same issues canvassed in the Application dated 29th September, 2025. They deponed that the Plaintiff's Application is an attempt to defeat, forestall and interfere with the court's ruling which was slated for 11th December, 2025. They deponed that the Plaintiff delayed taking action being fully aware of the facts she now seeks to rely on. The Defendants averred that the matter has been pending in court since 2020 and the Plaintiff has consistently failed to comply with court directives, including the 30-day timeline issued on 15th May, 2025.
18. The Defendants averred that the Plaintiff's role as executor is being challenged with a ruling set for delivery in that matter on 16th December, 2025. They alleged that a party who sits on their rights cannot invoke urgency as self-induced urgency is not actionable. They termed the Plaintiff's application misconceived, frivolous and an abuse of court process, and claimed that the Plaintiff had not demonstrated sufficient cause to warrant extension of time, nor shown any exceptional circumstances to justify the delay. They accused the Plaintiff of attempting to avoid the consequences of her own procedural non-compliance. The Defendants deponed that justice demands finality, and asked that the Plaintiff not be indulged at the expense of their right to have the matter determined without delay. They thus asked that the Plaintiff's Application be dismissed with costs.
19. Reacting to the Defendants' response, the Plaintiff filed a Further Affidavit sworn on 9th December, 2025 claiming to clarify the material misrepresentation of facts contained in the Replying Affidavit. She once more reiterated the contents of her Replying Affidavit of 21st October, 2025 and reiterated that the delay was proximately caused by the Defendants silence, which amounts to a breach of duty of candour and cooperation. That the Defendants cannot be allowed to benefit from their wrongdoing.
20. The Applicant deponed that when account is taken of the matters undertaken by the Plaintiff from filing the citation to filing of the Amended Plaint, then there was a delay of only 13 days and not 40 days. She averred that the insinuation that she acted without diligence and in bad faith are entirely unfounded. The Applicant deponed that if the Court were to uphold the Defendant's Application, the consequences will be catastrophic and irreversible. She urged that the balance of convenience lies in favour of allowing the Plaintiff's application.
21. The Applicant deponed that the Defendants' own adherence to procedural timelines has been less than pristine and once more cited their failure to inform her of the representatives of the estate. She asked that the Plaintiff's application be allowed and the Defendants' application to strike out the Amended Plaint be dismissed, and also asked for the costs of both applications.



Submissions:

22. The two Applications were canvassed by way of written submissions. With regard to the Application dated 29th September, 2025 the 1st and 2nd Defendants filed their submissions dated 4th November, 2025, in support of the Application, while the Plaintiff filed submissions dated 10th November, 2025 in opposition thereto.
23. On the Application dated 25th November, 2025 the Plaintiff filed submissions in support dated 18th December, 2025. The 1st and 2nd Defendants submissions on this second application are dated 12th January, 2026.

The 1st and 2nd Defendants'/Applicants' Submissions;

24. On the first application, Counsel for the 1st and 2nd Defendants submitted that the Order of this Court issued on 15th May, 2025 expressly required the Plaintiff to file and serve an Amended Complaint within 30 days from that date, which expired on or about 14th June, 2025. That the Plaintiff, however, filed the Amended Complaint on 24th July 2025, forty days after the lapse of the fixed time without seeking leave or extension thereof. Counsel submitted that once a Court has prescribed a specific period for compliance, any act done outside that period without leave is a nullity ab initio. Counsel relied on *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others* (2014) eKLR and *Ngumbi vs Kanini* (Environment and Land Appeal E021 of 2023) (2025) KEELC 1252 (KLR).
25. Counsel submitted that Order 8 Rule 3 of the Civil Procedure Rules empowers a party to amend pleadings only with leave of the Court after close of pleadings or where a court order directs such amendment within a specified time. That by failing to comply with the time set in the Court's order, the Plaintiff blatantly disregarded express judicial directions, rendering her amended pleading irregular and void. Counsel cited *Mwasha & Another vs Kenya Swimming Federation & 3 others; Omoro & another (Interested Parties)* (Petition E088 of 2021) (2025) KEHC 9579 (KLR) and *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & another* (2005) KLR 828.
26. Counsel cited Section 3A of the *Civil Procedure Act* which grants this Court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Counsel claimed that filing pleadings contrary to Court orders constitutes an abuse of the court process and warrants the exercise of the said inherent jurisdiction. Counsel cited *Ivita vs Kyumbu* (1975) KEHC 4 (KLR). Counsel argued that it is only just and proper that the Amended Complaint filed in contravention of the Court's directive be struck out to uphold the sanctity of judicial orders and the integrity of the Court process. The Defendants prayed that the application be allowed as prayed.
27. With respect to the Plaintiff's application to extend time, Counsel submitted that discretionary reliefs are only available to a party who approaches the court with clean hands. Counsel submitted that the Plaintiff had not offered any satisfactory explanation for failing to seek leave prior to filing the Amended Complaint out of time. Counsel cited the case of *Nicholas Kiptoo Arap Korir Salat* (Supra) where it was held that extension of time is not a right but an equitable relief.
28. Counsel submitted that Order 8 of the Civil Procedure Rules contemplates the amendment of pleadings either with leave of the Court or in strict compliance with timelines expressly granted. Counsel thus argued that the filing of the Amended Complaint without leave rendered the pleading a nullity ab initio. Counsel relied on *Ngumbi vs Kanini* (Environment and Land Appeal E021 of 2023) [2025] KEELC 1252 (KLR), where it was held that pleadings filed out of time without leave are a nullity and cannot be validated by subsequent applications. Counsel argued that granting the Plaintiff's prayers would amount to this Court rewriting its own orders and legitimising disobedience, which is



unsupported by law. Counsel further submitted that the Plaintiff's application is an abuse of the court process and will prejudice the Defendants.

29. Counsel urged that Article 159 is not a panacea for all procedural infractions. Counsel relied on *Econet Wireless Kenya Ltd vs Minister for Information & communication Technology & Another* (2005) KLR 828 and *Raila Odinga & Others vs IEBC & 3 Others* (2013) eKLR. On the allegation that no prejudice will be occasioned to the Defendants, Counsel argued that prejudice is not only limited to demonstrable financial loss, but includes inconvenience, delay, uncertainty and the erosion of the authority of court orders. Counsel cited the case of *Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others* (2009) eKLR. Counsel submitted that extension of time ought to have been sought before the act sought to be validated, and argued that a party cannot violate court orders and then seek the Court's indulgence. Counsel asserted that the Amended Plaintiff is incompetent and should be dismissed.

The Plaintiff's submissions;

30. On the part of the Plaintiff, Counsel submitted that Article 159(2)(d) of the *Constitution* requires that justice be administered without undue regard to procedural technicalities, and is reflected at Section 19 of the *Environment and Land Court Act*. Counsel submitted that there has been a shift from the era of strict procedural compliance, and now courts must weigh the interests of justice. Counsel submitted that procedural rules are handmaidens of justice, and argued that striking out the Amended Plaintiff is against the spirit of the law. She relied on *Abdirahman Abdi vs Safi Petroleum Products Ltd & 6 Others* (2011) eKLR, *D.T. Dobie & Co. (Kenya) Ltd vs Muchina* (1982) KLR 1 and *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others* (2014) eKLR.
31. Counsel further submitted that this court has jurisdiction under Section 95 of the *Civil Procedure Act* and Order 50 Rule 6 of the Civil Procedure Rules to extend time and validate the Amended Plaintiff. Counsel for the Plaintiff also referred to Section 59 of the *Interpretation and General Provisions Act* on the power of the court to extend time. Counsel urged that preferably, a court is to allow a case to proceed unless the procedural lapse impairs the opposing party's rights, and contended that the Defendants had not alleged or shown any material prejudice, thus the delay is not fatal.
32. Counsel submitted that striking out the Plaintiff would cause severe injustice to the Plaintiff who will lose the opportunity to plead her case. However, on the other hand, the Defendants will only suffer a minor inconvenience of filing an amended defence. Further that the reason for the delay has been explained. Counsel accused the Defendants of using procedural rules to defeat the claim rather than substantive justice. Counsel cited *Shabir Ali Jusab vs Anjarwalla & Khanna* (Supreme Court Application No. 1 of 2013), *Joseph Kiangoi vs Wachira Waruru* (Civil App. No. 30 of 2008) and *Ayub Murumba Kaikai vs Webuye County Council*.
33. The Plaintiff's Advocate also submitted that this is a court of equity, which must intercede to ensure that no party gains an undue advantage from its own wrongs. Counsel pointed to the alleged concealment of facts by the Defendant, whom she contends lulled the Plaintiff to miss the deadline. Counsel relied on *Macharia Mwangi Maina & 87 Others vs Davidson Mwangi Kagiri* (2014) eKLR and *Chase International Investment Corp vs Laxman Keshra* (1978) KLR 143. In conclusion, Counsel asked that the Plaintiff be allowed to have her case heard fairly and a just outcome unfettered by procedural impediments.
34. In her submissions in support of the extension of time, Counsel cited Section 95 of the *Civil Procedure Act* and Order 50 Rule 6 of the Rules thereunder which vest the court with discretion to enlarge time. Counsel also cited Sections 1A and 1B and Article 159 of the *Constitution* that promote proportionate



and substantive justice over procedural technicalities. Counsel argued that enlargement of time is an equitable remedy meant to ensure parties are not shut out from the seat of justice due to procedural lapses, thus where the delay is explained and no prejudice is occasioned, refusing to enlarge time is contrary to the law. Counsel submitted that the delay on the Plaintiff's part has been explained, and no prejudice will be occasioned. She asked the court to exercise its discretion to enlarge time and relied on the case of *Otieno vs Omwanda & Another* (Miscellaneous Civil Application E016 of 2022) (2025) KEHC 9007 (KLR).

35. Counsel submitted that the delay is not attributable to the Plaintiff and placed the blame on the Defendants, and asked that they should not be allowed to benefit from their own wrongdoing. Counsel submitted that the Plaintiff had satisfied the legal test for extension of time and asked the court to exercise its jurisdiction in her favour. She relied on *R vs Ambrose Odwayo O. Onyango & Another ex parte Caesar Ngige Wanjao and Khunaif Trading Company Limited vs Spire Bank Limited* (formerly Equitorial Commercial Bank Limited) (2018) KEHC 4846 (KLR).
36. Counsel reiterated that the Defendants will suffer no prejudice that cannot be compensated by costs if the amended Plaint is not struck out. Counsel however claimed that the Plaintiff will suffer irreparably by losing a substantive right as the Estate will be left without a remedy in relation to the claim over the suit property, and deprive his beneficiary of their rightful entitlement. Counsel also claimed that striking out the suit will have the effect of a judgment on merit, giving rise to *res judicata* and issue estoppel, thereby barring the claim from being re-asserted. In conclusion, Counsel for the Plaintiff called on Article 159(2)(d) and urged that it is in the interest of justice, equity and the rule of law that the extension sought be granted.

Analysis and Determination:

37. This Court has considered the applications, the law and the submissions by the rival parties. The issues for determination are:-
 - i. Whether the application for striking out the Amended Plaint is merited;
 - ii. Whether this court has power to extend time and validate the Amended Plaint filed on 24th July, 2025; and
 - iii. Who shall bear the costs of the application?

a. Whether the application for striking out the Amended Plaint is merited;

38. When it comes to striking out of pleadings, Order 15 Rule 2 of the Civil Procedure Rules provides that:-
 15. Striking out pleadings [Order 2, rule 15]
 - (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
 - (a) it discloses no reasonable cause of action or defence in law; or
 - (b) it is scandalous, frivolous or vexatious; or
 - (c) it may prejudice, embarrass or delay the fair trial of the action; or
 - (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.



(2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.

39. From the above provision, the power to strike out any pleading or any part of a pleading is not mandatory but discretionary. This discretion is meant to be exercised having due regard to the quality and all the circumstances relating to the offending pleading. Courts have expressed that striking out pleadings is a powerful, drastic remedy that they are reluctant to use, and that it is an action reserved for the most serious procedural abuses.

40. The Court of Appeal in *Cooperative Merchant Bank Ltd vs George Fredrick Wekesa Civil Appeal No. 54 of 1999* as cited in the Court of Appeal case of *Uchumi Supermarkets Limited & Another vs Sidhi Investments Limited (2019) eKLR*, rendered that:-

“Striking out a pleading is a draconian act, which may only be resorted to, in plain cases... A court may only strike out pleadings where they disclose no semblance of a cause of action or Defence and are incurable by amendmentthis cannot be said to fall into that category and had the trial judge considered fully all the matters alluded to, he would not have come to the same conclusion.”

41. The circumstances of this case are that the suit was instituted by David Kiptoo Cheluget, now deceased, against his two children, the 1st and 2nd Defendants herein. Before the matter could be set down for hearing, the Plaintiff died on 15th June, 2024. His widow, Hellen Chepkoech Cheluget, having been appointed as the executor of his estate, applied to be substituted in place of the deceased original Plaintiff, David Kiptoo Cheluget, vide an application dated 15th October, 2024.

42. The said application was determined through a Ruling delivered on 15th May, 2025 where this court issued the following orders:-

- i. The Respondent’s Notice of Preliminary Objection dated 15th January, 2025 is without merit and is dismissed.
- ii. The name of the Plaintiff herein David Kiptoo Cheluget (deceased) be and is hereby substituted with the name of the Applicant Hellen Chepkoech Cheluget.
- iii. The Applicant is directed to immediately and not later than 30 days from the date hereof, file an Amended Plaintiff to reflect the change of the Plaintiff from the deceased to the said Hellen Chepkoech Cheluget.
- iv. The estate of the late Anna Cheluget is hereby joined to this suit as a 3rd Defendant, and the Applicant is hereby directed to ensure that the pleadings are amended to reflect the said joinder.
- v. Costs of the application and the PO shall be in the cause.

43. However, the Plaintiff, contrary to the above directions, filed the Amended Plaintiff on 24th July, 2025, about forty (40) days after the fixed timeline. It is this failure to comply with the court ordered timeline that inspired the present application by the 1st and 2nd Defendants. They seek to have the Amended Plaintiff struck out for reason that it was filed outside the period prescribed by the court in its ruling of 15th May, 2025.

44. The reason given for the non-compliance is that the Plaintiff was not aware of the status of representation in the estate of the late Anna Cheluget. As a result, she had to first file Citation proceedings against the Defendants herein to take out letters of Administration in their late mother’s estate.



45. The Plaintiff annexed the Citation Proceedings in Eldoret HCP&A Citation No. E106 of 2025; In the Estate of Anna Cheluget alias Anna Jemaiyo Cheluget. The Plaintiff claims to have caused service of the Citation proceedings on the 1st and 2nd Defendants on 6th June, 2025. However, from Affidavit of Service sworn by Pella Amugune Tsisaga on 25th June, 2025, he indicates therein that he received the documents on 23rd June, 2025 and proceeded to serve them on the 1st and 2nd Defendant on 23rd and 24th June, 2025 respectively.
46. It is true therefore that the Citation was served on the 1st and 2nd Defendant after the expiry of the time allowed by this court. But I am of the opinion that the 1st and 2nd Defendants could have mitigated further delay by releasing the information sought through the citation to the Plaintiff in good time.
47. The 1st and 2nd Defendants could have informed the Plaintiff that they had already filed Eldoret P&A No. E128 of 2025 over the subject estate on 4th April, 2025. It took their physical attendance being required by the court vide the Summons Requiring Attendance dated 7th July, 2025 for them to file an Entry of Appearance to the citation dated 7th July, 2025. Thereafter, through their Advocates, they notified the Plaintiff's Counsel vide an email of 10th July, 2025 that they had lodged a Petition for Letters of Representation over their mother's estate in Eldoret HCFP&A No. E128 of 2025.
48. It is not lost on me that if I allow the striking out of the Amended Plaintiff, the suit herein will have abetted since the original Plaintiff died on 15th June, 2024. Allowing the application herein will therefore be akin to striking out the suit and as a result it will not be heard on merit, despite the plaintiff obtaining a grant and filing the requisite substitution proceedings pursuant to Order 24 Rule of the [Civil Procedure Act](#).
49. In this instance, striking out the Amended Plaintiff is indeed draconian since it will deny the Plaintiff her day in court. In *DT Dobie & Company (Kenya) Limited vs Muchina & another (1980) KECA 3 (KLR)*, the Court of Appeal held that:-
- “ 22. ... A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.
23. No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”
50. It is trite that a court should only do so where the court is satisfied that there is no real case or the suit is an abuse of court process. From a cursory glance of the Amended Plaintiff, that is not the case. The Plaintiff discloses a cause of action with triable issues which ought to be allowed to go to trial. Consequently, this court will refuse to strike out the amended Plaintiff for the reasons advanced by the 1st and 2nd Defendants.

b. Whether this court has power to extend time and validate the Amended Plaintiff filed on 24th July, 2025.

51. The Plaintiff in her Application dated 25th November, 2025 has asked the court to extend time for filing the Amended Plaintiff, and further validate the Amended Plaintiff dated 23rd July, 2025 and filed in court on 24th July, 2025. The Plaintiff has placed reliance on Article 159(2)(d) of the [Constitution](#) of Kenya,



2010 as well as Section 19 of the *Environment and Land Court Act*, read with Sections 1A and 1B of the *Civil Procedure Act*.

52. Article 159(2)(d) of the *Constitution* directs that in the exercise of judicial authority, courts are to ensure that justice is administered without undue regard to procedural technicalities, which is reiterated at Section 19 of the *Environment and Land Court Act*. I am well aware that Article 159(2)(d) does not provide an automatic cure for all procedural deficiencies and/or technicalities. In my opinion however, the Plaintiff's failure to abide by the timelines is not fatal or sufficient to disentitle her to the reliefs sought in this suit and drive her away from the seat of justice.
53. In such a case, I am bound to employ the overriding objectives set out at Sections 1A and 1B of the *Civil Procedure Act*, and reiterated at Section 19 of the *Environment and Land Court Act* which favour the just determination of proceedings. I do note further, that at Section 3A of the *Civil Procedure Act*, this court has inherent power to make such orders as may be necessary for the ends of justice to be met.
54. In addition to this, I have also looked at Order 50 Rule 6 which provides as follows:-
6. Power to enlarge time [Order 50, rule 6]
- Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:
- Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.
55. While under the above provision the court's power to extend time is set in motion by application from a party, the Court has power under Order 8 Rule 6 of the Civil Procedure Rules to extend time of its own motion. Order 8 Rule 6 for instance provides that:-
6. Failure to amend after order [Order 8, rule 6]
- Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.
56. But more importantly, Section 95 of the *Civil procedure Act* provides that:-
95. Enlargement of time
- 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.
57. The Supreme Court, in *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others* (2014) eKLR, acknowledged that the discretion of a court to extend time is unfettered. The Supreme Court in this case set out the principles that a court ought to consider when exercising the discretion to extend time. Key among these principles is whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court, and whether there would be any prejudice suffered by the respondents if the extension was granted.



58. As to whether there is any justifiable reason for the delay to warrant the exercise of the court's discretion in favour of the Plaintiff and whether the delay has been satisfactorily explained to this court, I note that the Plaintiff gave a valid reason for the delay. The 1st and 2nd Defendants have faulted her for opting to go through the long process of citation, yet they could have shortened the delay by supplying the information to the Plaintiff in the first instance.
59. On the issue of any likely prejudice for the extension, the 1st and 2nd Defendants claim that they will be prejudiced by being required to file a response to an illegal pleading filed out of time and without leave of court. I have looked at the Amended Plaint filed as against the original Plaint filed by the deceased Plaintiff and note that there is no substantial change or addition made therein to warrant any prejudice to the Defendants. The substituted Plaintiff complied with the orders of the court and limited the amendments to reflect the substitution and addition of the estate of the late Anna Cheluget.
60. In any event, even if there were substantive amendments made to the Plaint, the 1st and 2nd Defendant would still have a corresponding right to file an amended response. This to me is not an inconvenience but an exercise of their right to be heard and to advance their case in court.
61. Bearing in mind the above deliberations, this court is convinced that the ends of justice will not be met by the striking out of the Amended Plaint. This is one of those cases where the omissions of the Plaintiff herein will benefit from the provisions of Article 159(2)(d) as well as other legal provisions cited herein.
62. My resolve is hardened by the fact that the matter is yet to be set down for hearing, therefore the 1st and 2nd Defendants will not be greatly prejudiced in that regard. In essence, I decline to strike out the Plaintiff's Amended Plaint dated 23rd July, 2025 and filed on 24th July, 2025. Instead, I do find that this court has power to extend the time for filing the Amended Plaint, and validate the Amended Plaint already filed by the Plaintiff, which I hereby do in the interests of justice.

Who shall bear the costs of this application?

63. The 1st and 2nd Defendants asked this court to make an order that the costs of the Application be in the cause. The Plaintiff on the other hand asked that the application be dismissed and for an order awarding her costs of the thereof. Notably, the award of costs is guided by Section 27 of the [Civil procedure Act](#), which provides that:-

27. Costs

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

64. Generally, therefore, courts have discretion when it comes to awarding costs. Costs are also ideally awarded to the successful party, unless good reason is shown for directing otherwise.



65. Despite my finding that the delay herein was justified, it still remains that the applications were made necessary only by reason of the said delay on the part of the Plaintiff in the first place. For this reason, I will direct that she shall bears the costs of these applications.

Orders:-

66. In the end and in view of the foregoing, the following orders shall issue:

- a. The 1st and 2nd Defendants' Notice of Motion Application dated 29th September, 2025 is not merited and the same is hereby dismissed.
- b. The time for filing the Amended Plaintiff is hereby extended, and the Amended Plaintiff dated 23rd July, 2025 and filed on 24th July, 2025 is hereby validated and admitted into the record.
- c. The Plaintiff shall bear the costs of these applications.

67. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 5TH DAY OF FEBRUARY, 2026 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of;

Ms. Chesoo & Ms. Chirchir for Plaintiff.

Mr. Kawamara Defendants.

Court Assistant - Laban.

