

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLMISC NO. E028 OF 2025

MARCELLA KWAMBOKA SESE APPLICANT

VERSUS

REBECCA NYAKERARIO RESPONDENT

RULING

1. The application before me is one dated 22 October 2025. The applicant seeks an order for leave to file suit out of time against one Rebecca Nyakerario for an order of permanent injunction to restrain her from the land parcel West Kitutu/Mwagichana/3540 (the suit land) which she avers is registered in the name of one Paul Matena Matena (deceased).
2. In the supporting affidavit, the applicant deposes that she is the only legitimate wife of the late Paul Matena Matena. She deposes that in the year 2021, she noticed some people encroaching on the suit land and she instructed the law firm of M/s Onguti & Company Advocates to file a claim, pursuant to which the suit Kisii MCELC No. E004 of 2021 was filed, but later withdrawn. She states that considering that the act of trespass occurred in 2021 it is prudent that she gets leave of court to file suit out of time.
3. Nothing was filed to oppose the motion and I have given it due consideration.
4. Extension of time is prescribed in Part III of the Limitation of Actions Act, Cap 22, Laws of Kenya covering Sections 22 to 31. The only provision I have seen where the court has leeway to extend time is Section 27 and 28 which provide as follows :

27. Extension of limitation period in case of ignorance of material facts in actions for negligence, etc.

(1) Section 4(2) does not afford a defence to an action founded on tort where—

(a) the action is for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a written law or independently of a contract or written law); and

(b) the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries of any person; and

(c) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and

(d) the requirements of subsection (2) are fulfilled in relation to the cause of action.

(2) ... (not relevant)

28. Application for leave of court under section 27

(1) An application for the leave of the court for the purposes of section 27 of this Act shall be made ex parte, except in so far as rules of court may otherwise provide in relation to applications made after the commencement of a relevant action.

(2) – (5) ... (not relevant)

5. What I see from the foregoing is that one can seek leave to file suit out of time in suits for negligence. I have not seen, and Mr. Onguti, learned counsel for the applicant, did not provide me with any law which gives the court power to grant leave so as to allow one to file a suit for a permanent injunction out of time.
6. This is not surprising because when it comes to land, an occupant also acquires rights with the passage of time, including the right of adverse possession. Indeed, under Section 17 of the Limitation of Actions Act, the title of a land holder is extinguished if he does not bring an action within the period of 12 years prescribed in Section 7 of the Act and it would thus be superfluous for a court to purport to extend time to the registered owner so as to file suit out of time. In matters of land, one needs to assess his position and see if

any other section of Part III provides him with relief, for example, Section 26 which provides that in cases of fraud, time starts running from the time of discovery of the fraud. This would be an extension of time by operation of law, and not because of leave being granted by the court.

7. For the above reasons, I find no merit in this application and it is hereby dismissed. I make no orders as to costs since the respondent filed nothing to oppose it.
8. Orders accordingly.

DATED AND DELIVERED THIS 25 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA
ENVIRONMENT AND LAND COURT
AT KISII

Delivered in the presence of :

Michael Oyuko – Court Assistant

No appearance on part of Mr. Onguti for the applicant

No appearance on part of the respondent