



**Nyachiro v Nyakoe (Environment and Land Miscellaneous Case
E013 of 2025) [2026] KEELC 1921 (KLR) (8 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 1921 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E013 OF 2025**

DO OHUNGO, J

APRIL 8, 2026

BETWEEN

NAOMI NYACHIRO APPLICANT

AND

JULIUS ONGERI NYAKOE RESPONDENT

RULING

1. By Notice of Motion dated 1st September 2025, which was filed on 2nd September 2025, the Applicant is seeking the following orders:
 1. That this application be certified as urgent and the same be heard on priority;
 2. That temporary orders be issued against the Respondent, agents and heirs who are threatening to injure the Applicants and family who are in occupation of the disputed land North Mugirango/Boisanga 1/2288.
 3. That the Applicant be granted leave to file the appeal out of time in ELC case no. 073 of 2010 Nyamira magistrates court where an ex parte judgment was entered and an order for eviction issued on 20th March 2014 without there notice.
 - a. That the ex parte judgment and order dated 20th March 2014 in ELC case no. 073 of 2010 Nyamira magistrates court be set aside because of non-disclosure that the case was resolved by the Land Tribunal way back in 10th June 2009 whereby the tribunal ruled in favour of the Defendant and the family in ELC case no. 073 of 2010 Nyamira magistrates court and no appeal or judicial review has been filed to date.
 4. That the Applicant be granted leave to appeal or defend the suit as an interested party or defendant in the suit property because he has been adversely mentioned in the affidavit of



service on record and she has a legitimate interest in the said property. She is the daughter of the interested party.

5. That costs of this application be provided.
2. The application is stated to be brought under Sections 1A, 1B and 80 of the Civil Procedure Act, and Section 26 of the Limitation of Actions Act, and Order 45 of the Civil Procedure Rules. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Applicant.
3. The Applicant deposed that she is a daughter to the Defendant in ELC Case No. 073 of 2010 at Nyamira Magistrates Court and that she therefore had legitimate interest in the suit property in the said case. That the Subordinate Court entered a summary judgment without the Defendant being served and without the Respondent disclosing that the suit was resolved by the Land Tribunal way back on 10th June 2009.
4. She further deposed that she was not aware of the proceedings since service of the summons was not effected upon her and that her father who was the Defendant left home around 2009 and had never seen since then. That an affidavit of service which had been filed in the Subordinate Court falsely claimed that she was served with an application dated 1st March 2023.
5. The Applicant further deposed that she was not added as a party in the suit before the Subordinate Court thereby creating doubt in the entire process and that the Respondent's non-disclosure had occasioned her family and her a lot of damage. She also stated that the disputed land was registered in her father's name and that her application to be added as an Interested Party was dismissed on 19th August 2025.
6. The Respondent opposed the application through Grounds of Opposition dated 26th September 2025 in which he took the position that the Applicant did not participate in the suit in the Subordinate Court and is therefore non-suited in the application, that the application is frivolous, vexatious and untenable in law, that there had been inordinate delay, that the application is an abuse of court process, an attempt to delay and defeat justice. He added that the application is a fishing expedition and urged the Court to dismiss it with costs.
7. The application was canvassed through written submissions. The Applicant filed submissions dated 6th October 2025 while the Respondent filed submissions dated 17th October 2025.
8. I have carefully considered the application, the affidavit in support, grounds of opposition and the submissions. The sole issue for determination is whether the orders sought should be granted.
9. From the onset, it must be remembered that this is neither an appeal nor is this Court hearing and determining ELC Case No. 073 of 2010 which is pending before Nyamira Magistrates Court. In terms of prayer number 3 of the application, the Applicant has mainly moved this Court seeking "leave to file the appeal out of time in ELC case no. 073 of 2010 Nyamira magistrates court where an ex parte judgment was entered and an order for eviction issued on 20th March 2014 ..."
10. It follows therefore that this Court does not have jurisdiction in the present application, to issue "temporary orders ... against the Respondent, agents and heirs" as sought at prayer 2; to consider whether "judgment and order dated 20th March 2014 in ELC case no. 073 of 2010 Nyamira magistrates court [should] be set aside" as sought at prayer a or even to consider whether to allow the Applicant to join the case in the Subordinate Court as an Interested Party, as sought at prayer 4 of the application. All those are matter that must be raised in the Subordinate Court and can only be escalated to this Court by way of an appeal against specific orders made by the said Court.



11. It is cardinal that jurisdiction is everything. Without it, proceedings come to a certain end and the Court cannot make any further step. See Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR.

12. The Court of Appeal had occasion to address the issue of centrality of jurisdiction in Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR as follows:

Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.

13. To the extent that prayer numbers 2, a, and 4 of the application were filed in this Court without jurisdiction, the said prayers are beyond redemption. I hereby strike them out.

14. The only prayer that falls for determination by this Court is prayer number 3 through which the Applicant is seeking “leave to file the appeal out of time in ELC case no. 073 of 2010 Nyamira magistrates court where an ex parte judgment was entered and an order for eviction issued on 20th March 2014.”

15. The Applicant is seeking leave to file an appeal out of time against an order made on 20th March 2014. Pursuant to Section 16A (1) of the *Environment and Land Court Act*, 2011, an appeal from the Subordinate Court to this court is to be filed within 30 days of delivery of the judgment or ruling. Further, Section 16A (2) of the Act gives this Court jurisdiction to admit an appeal out of time if the Appellant satisfies the court that he had a good and sufficient cause for not filing it in time.

16. The Supreme Court stated as follows in the case of in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others (supra), regarding the principles applicable to an application for enlargement of time:

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;

17. The present application was filed on 2nd September 2025, which is over ten years since the order sought to be appealed against was made. That kind of delay is certainly unreasonable.



18. The Applicant has attempted to explain that she was not served. She was not a party in the suit and could not therefore expect or demand to be served. I am aware that it is possible, in theory, for a person who was not party to proceedings to appeal against a decision made in the said proceedings. See *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* [2017] eKLR. Nevertheless, such a person must avail themselves of such a right within the statutory window for filing appeals. Any attempt to appeal out of time must meet the requirements for extension of time.
19. Based on the material on record, the Applicant has failed to lay a basis to the satisfaction of the court. Instead, she is intent on reviving old disputes that were resolved way back on 10th June 2009 and 20th March 2014. I agree with the Respondent that the application is an abuse of the Court's process.
20. In view of the foregoing discourse, I find no merit in the prayer for extension of time within which to appeal.
21. I therefore make the following orders:
 - a. Prayer numbers 2, a, and 4 of Notice of Motion dated 1st September 2025 are struck out for want of jurisdiction.
 - b. Prayer number 3 of Notice of Motion dated 1st September 2025 is dismissed.
 - c. Costs to the Respondent.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 8TH DAY OF APRIL 2026.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance for the Applicant

No appearance for the Respondent

Court Assistant: B Kerubo

