

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITUI**  
**SUCCESSION CAUSE NO. 4 OF 2016**

**IN THE MATTER OF THE ESTATE OF PAUL MBUVI MITAU**  
**(DECEASED)**

**NANCY MWENDE MBUVI**  
**ISAAC MUEME MBUVI.....PETITIONERS**

**-VERSUS -**

**MWEWA MBUVI .....2<sup>ND</sup> RESPONDENT**  
**JOEL VUNDI MBUVI .....3<sup>RD</sup> RESPONDENT**

---

**RULING**

The ruling relates to an application 13<sup>th</sup> November 2024 which was filed under a certificate of urgency and was seeking an order for review of the judgment of this court which was delivered on 25th January 2024.

The application was based on various grounds on the face of the application and was supported by the affidavit of Philles Serah Pius. The application was opposed by Joel Vundi Mbuvi and Mwendwa Mbuvi The protestors who filed their affidavits.

The Court directed at all the other parties in the succession cause be served. The parties were served as directed by the court and they appeared in court. The court gave directions that way application be converted by way of written submissions. The parties were also ordered to file their respective replying Affidavits if they wish to oppose the application. However, only the two protesters mentioned above filed their replying Affidavits. The counsel for the applicants was given several opportunities to file and serve his submissions the application to enable the respondents to file their submissions in reply to those of the applicant. The counsel for the applicants ended up not filing his written submissions and the court declined to give him a further adjournment and listed his matter for ruling.

I have considered the application which is seeking to review the judgment of this court. Submissions are vital in application like the one which was pending before me as it seeks to guide the court on the issues raised in the application and point out the relevant law and citing authorities which are

all aimed to assist the court to come up with a well informed ruling on the matter or the issue before it. This is brilliant court of Kenya in petition of (application) 011 of 2022 Kenya Airports Authority versus Otieno Ragot & Co Advocates, the court stated that to the delay in compliance by the appellant was therefore prejudicial to the respondent who was deponed the opportunity to respond to the appellants submissions guided by Court's decision in Independent Electoral and Boundaries Commission versus Jane Cheprenger and 2 others SC Petition number 5 of 2016 (2018) eKLR where we underscored the importance of complying with Court orders and given directions every party has an obligation to honor the Court's directions whereas filing of submissions is not incurable, and this court has discretion to allow such late filing, the appellant has not moved the court appropriately by way of an application for extension of time to file the said documents....”

The applicant was given four opportunities to file and serve his submission within a span of 4 months. The applicant

did not file its submissions and no explanation was offered for the delay. Failure to file the submissions was prejudicial to those who were denied the opportunity to enjoy the fruits of judgment. This is a Succession matter that involves many members of the family. It is therefore prejudicial for the Applicant to fail to prosecute the application and delay the conclusion of the matter. Though it has been held that striking out pleadings is draconian, this is one matter which the court has to strike out as the applicant has delayed the matter. It has been pending in Court since the year 2016. Majority of the dependants are content in the judgment and are not parties in the application for review. Litigation must come to an end. The application was filed under a certificate of urgency. The Applicant has not demonstrated any urgency in prosecuting the application. I order that the application dated 13th November 2024 be struck out for want of prosecution in failure to file the submissions.

L. GITARI

JUDGE

5/5/2026

Order read out in open court.

L. GITARI  
JUDGE  
5/5/2026

Original.