



**M’Tarichia v M’Ibuthania & 3 others (Environment and Land Miscellaneous Application E014 of 2023) [2024] KEELC 235 (KLR) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 235 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2023  
CK NZILI, J  
JANUARY 24, 2024**

**BETWEEN**

**STANLEY KALUNGE M’TARICHIA ..... EXPARTE APPLICANT**

**AND**

**PANCREAS MBURUNGA M’IBUTHANIA ..... 1<sup>ST</sup> RESPONDENT**

**GIDEON M’IBUTHANIA ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant seeks leave to file a suit out of time. It is averred that the applicant bought 1 acre of land from the 2<sup>nd</sup> respondent in 1995 and took vacant possession. However, when the title deed came out on 29.8.2017, the acreage was 0.23 acres, which the 3<sup>rd</sup> respondent declined to rectify. It is averred that the applicant filed Tigania Chief Magistrates ELC No. 94 of 2019, which was struck out for lack of jurisdiction.
2. Further, the applicant said that due to Covid 19, he fell sick and filed ELC No. E002 of 2021 upon recovery. ELC E002 of 2021 was struck out for being time-barred on 27.9.2023. He urges the court to grant him leave to lodge the suit. In the supporting affidavit dated 26.10.2023, the applicant has attached the transfer form dated 15.12.1995, title deed for L.R Tigania East/Kiguchwa/3702 application for rectification of grant letters from the district land adjudication and settlement officer, court proceedings in PMCC Tigania No. 54 of 2019, medical reports and judgment in Meru ELC No. E002 of 2021 as annexures marked SRM “1-9” respectively.



3. Though the application was served upon the respondents and a return of service sworn by Gilbert Karani Mati on 24.10.2023, no responses were received from the respondents. The application is brought under Sections 26, 27, and 28 of the [Land Adjudication Act](#).
4. Whereas the court has powers to grant leave to file a suit out of time, such power must be exercised judicious and on sound legal principles. The court has to scrutinize the case to see whether it is a proper case for leave. The delay must be reasonable or explainable. Whether the applicant was aware of material facts has to be considered.
5. In [Willis Onditi Odhiambo vs Gateway Insurance Co. Ltd](#) (2014) eKLR the Court of Appeal held that time to file a suit could only be extended where the action is founded on tort or negligence, nuisance or breach of duty and in respect of personal damages and not in cases involving contract or any other causes of action. See [Geoffrey Mbugua Muboro vs. Attorney General and Mary Osundwa vs. Nzoia Sugar Co. Ltd](#) (2002).
6. Section 3 (1) of the [Public Authorities Limitation Act](#) provides that no suit founded on tort shall be brought against the government after 12 months from the date the cause of action arose. Section 5 thereof says an extension of time may be made due to disability, while under Section 27 of the [Limitation of Actions Act](#), an extension of the limitation period may be made in case of ignorance of material facts in a negligence claim.
7. In this application, the applicant attributes the delay to sickness. He has attached a bundle of medical reports marked SKM 8 a – (g) as annexures. Unfortunately, he has not attached a copy of the intended draft plaint or pleadings. That notwithstanding, in paragraph 15 of the supporting affidavit, the applicant avers he filed Tigania ELC No. 94 of 2019, which was struck out for lack of jurisdiction, after which Covid 19 set in. It is instructive to note that the court did not close down but only scaled its operations between March 2020 and June 2020.
8. In paragraph 16 thereof, the applicant says he never gave up and moved this court in of the Meru ELC No. E002 of 2021, where he was heard on merits, the court struck out his suit for lack of leave under section 3 (1) of the [Public Authorities Limitation Act](#). In other words, I gather the applicant as saying that this court should grant leave and allow him to reopen the suit.
9. The judgment in the previous suit was delivered on 27.9.2023. It has not been appealed against or reviewed. Order 37 Rule 6 of the Civil Procedure Rules provides that applications under Section 27 of the [Limitation of Actions Act](#) if made before the filing of the suit, shall be made ex-parte, and if made after the filing of the suit, shall be made ex-parte in that suit.
10. In [County Executive of Kisumu vs. County Government of Kisumu and others](#) (2017) eKLR, the Supreme Court of Kenya said the extension of time is not a right of a party but an equitable remedy only available to a deserving party, after laying a basis, explaining the delay, the prejudice to the opposite party and that the public interest element must be considered.
11. In [Royal Medical Services Ltd vs Valentine Mugure Maina & another](#) (2019) eKLR, the court observed that where disability is raised, the court must consider all the circumstances of the case, such as the length of delay, reasons for the delay and knowledge of the facts by the plaintiff. In [Rawa vs Rawa](#) (1990) KLR 275, the court said the objection of limitation enactment is to prevent a plaintiff from prosecuting a stale claim on one hand and to protect a defendant on the other hand, after he has lost evidence for his defense from being disturbed after a long lapse of time.
12. In the Meru ELC No. E012 of 2021, the applicant herein was allowed to amend his initial plaint dated 15.12.2020 on 26.5.2021. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants, now the 3<sup>rd</sup> and 4<sup>th</sup> respondents, herein, in a



statement of defense dated 15.9.2022, raised the defense of statute limitation under Section 3 (1) of the *Public Authorities Limitation Act* and Section 16 of the *Government Proceedings Act*. The applicant did not seek leave to file the suit out of time within that file or seek the court to deem the suit as duly filed within time. Instead, the applicant let the suit go to its logical conclusion.

13. The applicant has come to this court presumably to seek to reopen the suit by seeking leave to cure a defect and deny the respondents an accrued right or defense to the intended suit, if any, to be filed. It is doubtful how the applicant will re-open a determined suit or avoid the rigors of res-judicata if allowed. The applicant has not told the court if it has powers to extend leave on contractual matters since, from his averments, what he bought as one acre turned out to be 0.023 acres.
14. From the averments, the applicant was ably represented by competent lawyers before he was taken ill. He cannot feign ignorance of the law. He was notified of the objection on time but ignored it in his former suit. See *Mary Wambui Kabugu vs Kenya Bus Service Ltd* (1997) eKLR, *Oruta & Another vs Nyamato* (1988) eKLR.
15. Considering the above and the lack of due diligence, I find the application before the court an abuse of court process and lacking merits. The same is dismissed with no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 24<sup>TH</sup> DAY OF JANUARY 2024.**

**In presence of**

**C.A Kananu/Mukami**

**Miss Musyimi for applicant**

**Miss Maina for 3<sup>rd</sup> & 4<sup>th</sup> the respondents**

**HON. CK NZILI**

**JUDGE**

