



**Kironua & 8 others (Suing as Representatives of Mailua Group Ranch) v Director Land Adjudication and Settlement & 3 others; Siamito & 9 others (Interested Parties) (Judicial Review E005 of 2023) [2025] KEELC 881 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 881 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
JUDICIAL REVIEW E005 OF 2023  
LC KOMINGOI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**DANIEL KOIKAI KIRONUA ..... 1<sup>ST</sup> EXPARTE APPLICANT  
PARMERES NINA ..... 2<sup>ND</sup> EXPARTE APPLICANT  
SHAPAPA MPAPA ..... 3<sup>RD</sup> EXPARTE APPLICANT  
JOSHUA LENGETESARBABI ..... 4<sup>TH</sup> EXPARTE APPLICANT  
KOILEKEM SEMPETA ..... 5<sup>TH</sup> EXPARTE APPLICANT  
MEIBUKO MOSILA ..... 6<sup>TH</sup> EXPARTE APPLICANT  
TOBIKO NKULANA ..... 7<sup>TH</sup> EXPARTE APPLICANT  
MASHIPEI TIRATI ..... 8<sup>TH</sup> EXPARTE APPLICANT  
SINJALE OLE KANORE ..... 9<sup>TH</sup> EXPARTE APPLICANT  
SUING AS REPRESENTATIVES OF MAILUA GROUP RANCH**

**AND**

**DIRECTOR LAND ADJUDICATION AND SETTLEMENT ... 1<sup>ST</sup> RESPONDENT  
STEPHEN G. MAYAKA, REGISTRAR OF GROUP REPRESENTATIVES IN  
THE DIRECTORATE OF LAND ADJUDICATION & SETTLEMENT OFFICE  
NAIROBI (IN PERSON) ..... 2<sup>ND</sup> RESPONDENT  
KAJIADO LAND ADJUDICATION & SETTLEMENT OFFICER .... 3<sup>RD</sup>  
RESPONDENT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**



LESHONKO NKONERI SIAMITO .....	INTERESTED PARTY
SARUNI MPAPA NAKOYO .....	INTERESTED PARTY
JACKSON NTUYOTO MARASUA .....	INTERESTED PARTY
RAIGOT MASERI .....	INTERESTED PARTY
JOSEPH KARANTEI NKONYEK ONGUAN .....	INTERESTED PARTY
TOBIKO SHAANKWA .....	INTERESTED PARTY
LEKITONY SAITOTI .....	INTERESTED PARTY
SETEI LARMOI .....	INTERESTED PARTY
LEMARON MUTENTE NKAISERRI .....	INTERESTED PARTY
NKAITOLE MARORO .....	INTERESTED PARTY

### RULING

1. This Ruling is in respect of the Notice of Motion application dated 30<sup>th</sup> January 2024 and the Preliminary Objection dated 15<sup>th</sup> January 2024.
2. The Notice of Motion brought pursuant to Sections 1A, 1B and 3A of the [Civil procedure Act](#) and Order 50 Rule 1 and 6 of the Civil Procedure Rules seeks:
  - i. Spent;
  - ii. The time limited for the filing of the Substantive Notice of Motion pursuant to the court's orders granting leave on 18<sup>th</sup> October 2023 be extended or expanded as the court will find and deem appropriate but in any event for a further 7 days from the date of this Court's order.
  - iii. The substantive motion dated and filed in the court on 21<sup>st</sup> November 2023 pursuant to the orders above be deemed to have been filed with the leave of the court so granted and be fixed for hearing on priority basis.
  - iv. The costs hereof be in the cause.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 6. The Application is supported by the Affidavit of Namada Simoni, Advocate for the Ex-parte Applicants. Counsel states that on 17<sup>th</sup> October 2023, they filed a motion for leave, which was granted on the 18<sup>th</sup> October 2023 and the Court ordered for filing of the substantive motion within 21 days. The Court however went on and set a hearing date on the 26<sup>th</sup> October 2023 to address the question of whether the leave ought to operate as stay. The Advocate thus concentrated on ensuring the same had been served upon all the Respondents and Interested Parties who are in different areas in Nairobi and Namanga. On the 26<sup>th</sup> October 2023, parties consented to resolve the dispute and the Consent Order was extracted on 1<sup>st</sup> November 2023. Following this consent, the substantive motion was not filed on the expectation that a settlement would be reached and that is why the contempt sentencing was also halted. The settlement was however unsuccessful and the application was then filed on the 21<sup>st</sup> November 2023 which was 12 days late. This delay was neither unreasonable, without explanation nor prejudicial to the parties.
4. Counsel went on to add that this suit was filed following the Interested Parties' purported elections contrary to the Court orders in place. And a contempt application was filed to cite the 3<sup>rd</sup> Interested



Party herein in Judicial Review Case No. 968 of 2017. Therefore, the Interested Parties had no audience before Court and before purging the contempt.

5. The 1<sup>st</sup> to the 4<sup>th</sup> Respondents in their Preliminary Objection dated 15<sup>th</sup> January 2024 opposed this application on grounds that the substantive motion ought to have been filed by 7<sup>th</sup> November 2023 and it had therefore been overtaken by events and it should be struck out for having violated Order 53 Rule 3(1) of the Civil Procedure Rules.
6. These applications were canvassed by way of written submissions.

### **The Ex-parte Applicants Submissions**

7. They are dated 25<sup>th</sup> October 2024. They raise five issues for determination:-
  - i. Whether the Application is merited?
  - ii. Whether there is prejudice?
  - iii. Question of public interest.
  - iv. The question of the Preliminary Objection.
  - v. Who should bear the cost of this Application?
8. Counsel has relied on order 50 rule 6 of the Civil Procedure Rules and the case of Republic Vs. Speaker of the Nairobi County Assembly & Another Exparte Evans Kidero (2017) eKLR. Counsel submitted that the parties were to enter into negotiations with a view to resolve the dispute between the parties without the need to continue with fights in court. That having resolved to negotiate the whole dispute to obviate unnecessary continuity of court cases the Ex parte Applicant's counsel spent time engaging with the Interested Parties Advocate Mr. Nyaberi to put up a mediation meeting.
9. It is also submitted that the 12 days delay was occasioned by genuine efforts being made to reach a resolution in terms of the validly entered consent order.
10. Counsel also submitted that this case is tied to the on goings in JR 968/2017, where the Interested Parties have been held in contempt of the court. It would be prejudicial that in spite of the existing valid orders, the Director of Land Adjudication and the Interested Parties proceeded to call for an election against the existing court orders. The election was conducted contrary to the said orders.
11. He further submitted that the dignity of the court process ought to be preserved by challenging the impunity. The twelve (12) day delay is not prejudicial to the Interested Parties.
12. It is also submitted that public interest ought to be taken into account. Mailua Group Ranch has over 5000 members. There is need to properly ventilate the issues in court to prevent anarchy. He has put forward the case of Republic Vs. General Manager Moi International Airport and Another Exparte Jared Adimo Odhiambo & Another (2014) eKLR.
13. He prays that the Preliminary Objection be found to lack merit and the same be dismissed and the Notice of Motion be allowed.

### **The 1<sup>st</sup> to 4<sup>th</sup> Respondents' submissions**

14. On whether there was a suit before Court, Counsel submitted that Order 53 Rule 3(1) of the Civil Procedure Rules provides that a substantive motion pursuant to leave must be filed within 21 days, which the Ex-parte applicants had not complied with. Reference was made to the Supreme Court case of Zacharia Okoth Obado vs Edward Akong'o Oyugi & 2 others [2014] eKLR which underscored



the importance of adhering to procedural rules. Therefore, the application which was filed after the applicants were served with the Respondents' objection was an afterthought and should be dismissed with costs.

### **The Interested Parties' submissions**

15. On whether the substantive motion should be struck out, Counsel also made reference to Order 53 Rule 3(1) of the Civil Procedure Rules stating that it should be struck out for having been filed out of time and without leave of Court citing *Abdullahi v National Land Commission & 6 others* (2024) KECA 183 (KLR). Counsel submitted that the Applicants reasons for delay were unreasonable because there were neither negotiations ongoing nor did the Applicants prove their efforts on following up on the said negotiations. Counsel added that the ongoing proceedings in the primary motion did not stop the filing of the substantive motion and neither did the extraction and service of the orders. It was also pointed out that it was until 30<sup>th</sup> January 2024 when the applicants filed the substantive motion which was 73 days after the expected date of filing which was unduly late, unreasonable and should be dismissed. Reference was made to *Nicholas Kiptoo Arap Salat vs Independent Electoral and Boundaries Commission & 7 others* (2014) eKLR

### **Analysis and determination**

16. I have considered the Notice of Motion and the Preliminary Objection, the written submissions, and the authorities cited. The issues for determination are:
- i. Whether the ex parte applicants are entitled to extension of time to file their substantive motion;
  - ii. Is the Preliminary Objection merited?
  - iii. Who should bear the costs of this application?
17. The Ex parte Applicants on 18<sup>th</sup> October 2023 were granted 21 days leave to file their substantive motion. Counsel for the Ex Parte Applicants outlined that some of the reasons for delay included the Consent judgement that was entered as they tried to reach a settlement, an argument that was contested by the Interested Parties.
18. Have the Ex parte Applicants therefore met the threshold for grant of extension of time to file the substantive motion? The Supreme Court of Kenya in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) stated as follows on the issue of extension of time:

“

“74. Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

...

85. ... A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered



by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time...”

19. I have considered the circumstances of this case. It is on record that there are other suits related to this one pending determination including JR.968 of 2017, where the 3<sup>rd</sup> Interested Party has been found to be in contempt.

20. Counsel for the Ex parte Applicants have sought to regularize their substantive application dated 21<sup>st</sup> November 2023. Was this application filed unreasonably late? Without counting public holidays and weekends, the 21 day period for filing of the substantive motion lapsed on or about 13<sup>th</sup> November 2023. The motion on record is dated 21<sup>st</sup> November 2023. Counsel gave reasons as to why there was a delay including the consent judgement that had initially been entered. I rely on the cases of Republic Vs. Speaker of Nairobi City Council Ex parte Evans Kidero (2017) eKLR where Aburili J. stated thus;

“Applying the above principles to this case, the court notes that indeed there was delay in filling of the substantive motion by 7 days which in my humble view is not inordinate delay, Secondly, albeit there was delay in filing of the application for validation of the filed motion, that delay of 43 days has been satisfactorily explained to the court. The court accepts the explanation that the applicant’s counsel however senior he is, was caught up in the mix of responding to the application by the respondents seeking to vacate the orders of 10<sup>th</sup> October 2016 issued by this court and therefore concentrated on that response instead of filing the substantive motion and only came to when, from the record, the application for contempt was being mentioned.”

21. Looking at the circumstances of this case and what has transpired, I am satisfied that the delay is not unreasonable. Secondly, I see no prejudice that will be occasioned against the Respondents and Interested Parties if this extension is granted. And finally, this court has also taken into consideration that the dispute is of public interest as it touches on the management of the Mailua Group Ranch.

22. In essence I find no merit in the the Preliminary objection and the same is dismissed with no orders as to costs.

23. I hereby allow the Notice of Motion dated 30<sup>th</sup> January 2024 in the following;

a. That the Substantive Motion dated and filed in court on the 21<sup>st</sup> November 2023 is allowed to have filed with leave of Court.

b. That costs be in the cause.

That costs be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:

Mr. Namada with Mr. Omari for the Ex parte Applicants’.

Mr. Kariuki for the Respondents.

Mr. Onyonka for Ms. Kisiriet for the Interested Parties.



Court Assistant – Mutisya.

