



**Rubara v Director of Land Adjudication and Settlement Officer  
(SIC) & 4 others (Environment and Land Miscellaneous Application  
E013 of 2024) [2025] KEELC 950 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 950 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E013 OF 2024  
BM EBOSO, J  
FEBRUARY 27, 2025**

**BETWEEN**

**NJUKI RUBARA ..... APPLICANT**

**AND**

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT OFFICER  
(SIC) ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**THE CHIEF, KAARE LOCATION ..... 4<sup>TH</sup> RESPONDENT**

**JULIA MUGERO MUGAMBI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. Through a chamber summons dated 25/9/2024, the applicant, Njuki Rubara, seeks an order enlarging the limitation period within which to file “an ELC case” to recover what he describes as land parcel number Lower East Magutuni 135. The said application is the subject of this ruling. The application was premised on the grounds outlined in the applicant’s affidavit dated 25/9/2024. It was canvassed through written submissions dated 23/1/2025, filed by M/s Ojwang Sombe & Company Advocates.
2. The case of the applicant is that, the 5th respondent, through the aid of the 1st, 2nd and 3rd respondents, fraudulently caused the suit land to be registered in her name. He seeks to challenge the registration through what he calls an “ELC Case.” He contends that on 9/3/2001, the Arbitration Board allowed his appeal and overturned the decision of the Adjudication Committee, adding that, by dint of that, he got back the suit land. It is the case of the applicant that there was no appeal preferred to the Minister to challenge the decision of the Arbitration Board. He states that he was accordingly



- allocated the suit land, adding that all his co-appellants who had appealed to the Arbitration Board were successful and were informed to wait for the title deeds relating to their respective parcels, which they subsequently got.
3. The applicant further contends that he took actual possession of the suit land measuring approximately 2 acres and he had been farming on it all along as he waited for the title deed. He adds that in 2013, after the death of the 5th respondent's husband, the 5th respondent started disturbing his peaceful occupation and enjoyment of the suit land, prompting him to file Chuka Chief Magistrate Court Civil Case No. 2 of 2014, seeking a permanent injunction against the 5th respondent.
  4. The applicant avers that while the case was pending in court, he kept visiting the Land Registry to check on whether the title deed had been processed but he was always told the title was not ready. The applicant adds that after the case in the Chuka Chief Magistrate Court was dismissed, the 5th respondent bragged that she had a title deed relating to the suit land. The applicant contends that he was subsequently shocked when he discovered from the records of the Adjudication Officer that the 5th respondent, without following due process, wrote a letter to the 1st respondent, through the 3rd respondent, purporting to overturn the decision of the Arbitration Board, dated 9/3/2001.
  5. The applicant adds that the decision of the Arbitration Board could only be set aside through an appeal to the Minister and not the Chief. He contends that the 1st, 3rd and 5th respondents "misrepresented" themselves by fraudulently and illegally using an alleged objection to illegally and unlawfully cause the 2nd respondent to register Lower East Magutuni 135 in the name of the 5th respondent.
  6. The applicant argues that the transfer and registration of land parcel number Lower East Magutuni 135 in the name of the late Wiston Mugambi, and later in the name of his wife, Julia Mugeru Mugambi, without filing an appeal to the Minister was unprocedural and unlawful. The applicant adds that he should be granted leave to file a suit out of time to recover his land, Lower East Magutuni 135.
  7. The 1st, 2nd, 3rd and 4th respondents opposed the application through grounds of opposition dated 3/2/2024. The case of the 1st, 2nd, 3rd and 4th respondents is that the application is fatally defective, misconceived, mischievous and an abuse of the court process. The four respondents contend that the alleged interference with the applicant's parcel of land occurred in 2013 and the delay in bringing proceedings has not been explained. The four respondents further contend that the applicant admitted to have filed Chuka CMC Civil Case No.2 of 2014 seeking injunctive and eviction orders, a suit which was dismissed. The four respondents add that the applicant did not file an appeal to challenge the dismissal order. They argue that the application does not disclose discovery of any new cause of action against the defendants that was not within the knowledge of the applicant at the time of instituting Chuka CMC Civil Case No. 2 of 2014.
  8. The four respondents further argue that the applicant has not disclosed the nature of claim they intend to institute out of time, hence the application is incompetent and ought to be dismissed. The four respondents contend that the application does not meet the threshold for the orders sought because the applicant has not demonstrated that the cause of action in the intended suit is based on fraud of the defendants or their agents or any person through whom they claim, adding that the applicant has not demonstrated that the right of action was concealed by the fraud of any of the defendants or their agents and neither has he demonstrated the intended action is for relief from the consequences of a mistake by the defendants. The four respondents further contend that the plaintiff has failed to demonstrate that the alleged fraud or mistake could not have been discovered earlier even with reasonable diligence.
  9. The four respondents argue that the application is bad in law and is only meant to defeat the cause of justice hence it should be dismissed with costs to the respondents.



10. The 5th respondent opposed the application through her replying affidavit dated 20/11/2024 and written submissions dated 3/2/2025, filed through C.K Mutegi & Co. Advocates. The case of the 5th respondent is that the application is frivolous, vexatious and an abuse of the court process and is a waste of valuable judicial time. The 5th respondent contend that the applicant has acknowledged the existence of Chuka Civil Case No.2 of 2014 wherein he sought a permanent injunction against the 5th respondent, which was subsequently dismissed. She further argues that the applicant has failed to take appropriate legal action to challenge the dismissal order and therefore the present application constitutes a clear abuse of the court process.
11. The 5th respondent contends that there has been inordinate delay on the part of the applicant in filing a suit against the respondents since the alleged cause of action arose over 10 years ago. She contends further that the application fails to disclose any excusable reason for the inordinate delay in bringing the suit against the respondents, adding that the application does not meet the threshold for an enlargement order. The 5th respondent adds that the applicant has failed to provide details of their intended claim against the respondents in order for the court to examine the grounds and the probability of success.
12. The Court has considered the application, the response to the application, and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The key question to be determined in this ruling is whether the application meets the criteria for exercising the discretionary jurisdiction to enlarge limitation period.
13. First, the prevailing jurisprudence on the question of enlargement of limitation period is that, limitation period is a dictate of *the Constitution*, substantive statute or subsidiary legislation. Secondly, jurisdiction of a court to enlarge limitation period is donated by *the Constitution*, substantive statute or subsidiary legislation. Thirdly, where limitation period has been prescribed and no enlargement powers have been vested in a court, the court does not have jurisdiction to enlarge the prescribed limitation period.
14. The Supreme Court emphasized the centrality of jurisdiction of a court in Samuel Kamau Macharia & Another Vs. Kenya Commercial Bank Limited & 2 Others [2012]eKLR in the following words:

A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of the law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* convers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.



15. The general principles that guide our courts when exercising jurisdiction to enlarge limitation period were outlined by the Supreme Court of Kenya in the Case of Nicholas Kiptoo Arap Korir Salat Vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR as follows:
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 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; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
16. The chamber summons application under consideration was expressed as brought under Order 37 rule 2 of the Civil Procedure Rules, 2010; Sections 26 and 27 of the *Limitation of Actions Act*; and Section 1A, 1B and 3A of the *Civil Procedure Act*. The Court has interrogated the above frameworks. Order 37 rule 2 of the Civil Procedure Rules does not deal with the subject of enlargement of time. The framework in Order 37 rule 2 of the Civil Procedure Rules is irrelevant to the plea for enlargement of time. What would be relevant is Order 37 rule 6. Even then, Order 37 rule 6 merely provides a procedural framework on how to move the Court for an extension order under Section 27 of the *Limitation of Actions Act*. It does not confer jurisdiction.
17. Section 26 of the *Limitation of Actions Act* provides that in a claim founded on fraud or mistake of a defendant, limitation period is to be reckoned from the time the claimant discovers the fraud or the mistake. Put differently, under Section 26 of the *Limitation of Actions Act*, provided the cause of action meets the threshold thereunder, the limitation period stands automatically extended by the statute. Put differently again, the cause of action is deemed to have accrued on the day the claimant discovers the fraud or mistake of the defendant.
18. Section 27 of the *Limitation of Actions Act* grants courts powers to enlarge limitation period in personal injury claims founded on torts of negligence, nuisance or breach of duty. For decades, our Superior Courts have emphasized that if a claim does not meet the threshold in Section 27 of the *Limitation of Actions Act*, the courts have no jurisdiction to enlarge time. In *Mary Osundwa Vs. Nzoia Sugar Company* [2002]eKLR, the Court of Appeal rendered itself on this Section as follows:
- “This section clearly lays down the circumstances in which the court would have jurisdiction to extend time. The action must be founded on tort and must relate to the torts of negligence, nuisance or breach of duty and the damages claimed are in respect of personal injuries to the plaintiff as a result of the tort. The section does not give jurisdiction to the court to extend time for filing suit in cases involving contract or any other causes of action other than those in tort. Accordingly, Osiemo, J. had no jurisdiction to extend time as he



purported to do on 28th May, 1991. That the order was by consent can be neither here nor there; the parties could not confer jurisdiction on the judge by their consent. Though Tanui, J. dismissed the suit on a different basis, we think the suit was bound to be dismissed in any event on the issue of limitation which was specifically pleaded in the defence. This appeal accordingly fails and we order that it be and is hereby dismissed but we make no order as to costs.”

19. Sections 1A, 1B and 3A of the Civil Procedure Act do not deal with the subject of enlargement of limitation period. They do not confer powers in the courts to enlarge time.
20. The totality of the foregoing is that, the applicant has not demonstrated the legal framework which donates to this Court jurisdiction to enlarge limitation period in respect of his cause of action.
21. Secondly, the applicant has not exhibited a draft of the plaint/pleadings that he intends to rely on. He has not disclosed the exact time when he discovered the alleged fraudulent registrations. He has exhibited a land register that shows that the parcel register relating to Mwimbi/L. E. Magutuni/135 was opened on 24/5/2017 and on the same day, the said land was registered in the name of the 5th respondent. The exhibited land register also shows that on 5/12/2017, a title was issued to the 5th respondent. If indeed the exhibited land register relates to the suit land, the applicant has not demonstrated the necessity of an enlargement order in a claim challenging a registration effected in May 2017.
22. Equally significant, in all his filings in this matter, the applicant has not disclosed the price date (s) when his cause of action or causes of action accrued. Even if the Court had jurisdiction, in the absence of disclosure of the precise time when the cause of action accrued, the Court would not know whether an enlargement order is necessary.
23. For the above reasons, the finding of the Court is that the application dated 25/9/2024 does not meet the criteria for enlargement of limitation period. Consequently, the application is rejected and dismissed for lack of merit.
24. In tandem with the principle in Section 27 of the Civil Procedure Act, the applicant will bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 27TH DAY OF FEBRUARY, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Court Assistant – Mwangi

Ms. Ocholla Advocate for the Applicant

Mrs Mutegi Advocate for the 5th respondent

