



**Ananja (Suing as Personal Representative of Geoffrey Ithiaru) v Baikalanya (Environment and Land Miscellaneous Application 15 of 2019) [2024] KEELC 5024 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5024 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 15 OF 2019**

**CK NZILI, J  
JUNE 26, 2024**

**BETWEEN**

**ZAKAYO MWITI MUNGATHIA ANANJA (SUING AS PERSONAL REPRESENTATIVE OF GEOFFREY ITHIARU) ..... APPLICANT**

**AND**

**M’ITHURI BAIKALANYA ..... RESPONDENT**

**RULING**

1. The court is asked to reinstate this application for hearing on merits. The grounds are set out on the face of the notice of motion dated 22.4.2024 and in the supporting affidavit sworn by Zakayo Mwiti Mungathia Ananja on the even date. It is averred that following a judgment delivered by the lower court in Maua CMCC No. 25 of 2007 on 14.1.2019, this application was filed, seeking leave to appeal out of time.
2. The applicant said that it was his late father who had filed this application but passed on, on 5.7.2019, and later on, the family resolved that he takes up the issue, and attempt an amicable resolution. The applicant avers that after attempts to settle the matter failed, he applied to court.
3. Though the respondent was duly served with the application and a return of service filed, no response was made.
4. The applicant’s late father approached this court under a certificate of urgency on 20.3.2019. The application was certified urgent and ordered to be served for a hearing on 6.5.2019. Service had not been made by 6.5.2019. Another date was taken. Come 2.7.2019 and 9.7.2019, the applicant was reported dead on 20.3.2019. An order was made for substitution.
5. The matter was mentioned on 17.9.2019, 24.10.2019, 5.12.2019, 20.2.2021 and 6.5.2021. On 15.7.2021, the court allowed the deceased to be substituted with Zakayo Mwiti Mungathia. A mention



date was taken for 17.11.2021, only for the court to be told that service had not been effected on the respondent. The court directed service to be undertaken within seven days and a hearing on 6.12.2021.

6. Come 6.12.2021, the respondent appeared in person, and the applicant withdrew the application with no order as to costs since the dispute had been resolved through reconciliation.

The court allowed the withdrawal and marked the file closed.

7. Having this background in mind, can the court reinstate the application when it was withdrawn based on reconciliation? The applicant says that the reconciliation has not been conclusive. Evidence of the nature and manner of reconciliation has not been availed. The delay in seeking reinstatement has not been explained.

8. In Nicholas *Arap Salat Vs. IEBC & 6 others* (2013) eKLR, the court held that extension of time was not a right of a party but a discretion to be exercised on a case-to-case basis. The parameters to apply include the length of the delay, reasons for the delay, and the public interest and the prejudice to the opposite party. Even if the court were to reinstate the application, the applicant has not explained the status of the suit land and whether despite the delay, justice can still be done to the parties. The upshot is that I find no merits in the application. The same is dismissed with no order as to costs. File closed.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU**

**ON THIS 26<sup>TH</sup> DAY OF JUNE, 2024**

**HON. C K NZILI**

**JUDGE**

