



Kafuta & 8 others v Chief Magistrates Court -Mombasa & another; Trustees Anglican Church of Kenya & 6 others (Interested Parties) (Environment & Land Miscellaneous Case E051 of 2024) [2024] KEELC 6129 (KLR) (25 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE E051 OF 2024
NA MATHEKA, J
SEPTEMBER 25, 2024**

BETWEEN

**JAPHETH MSHOTE KAFUTA 1ST APPLICANT
MNGWANA KASTRUNGI 2ND APPLICANT
STEPHEN KILELO MELANYI 3RD APPLICANT
SAMUEL MESANAI SHADRACK 4TH APPLICANT
MOHAMED OSMAN MAOW 5TH APPLICANT
OBED MNENE LUWERO 6TH APPLICANT
JOHN MWANYALO 7TH APPLICANT
TERESIA ATIENO ODUOR 8TH APPLICANT
AGNES NASETIAY SAMUEL 9TH APPLICANT**

AND

**CHIEF MAGISTRATES COURT -MOMBASA 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

AND

**TRUSTEES ANGLICAN CHURCH OF KENYA INTERESTED PARTY
PATRICK MAZA INTERESTED PARTY
KENNEDDY MWANDIGHA INTERESTED PARTY
JULIUS MWANZIGHE NYAMBU INTERESTED PARTY
ROSEMARY MBUGUA INTERESTED PARTY**



MARGARAT MNYANYI INTERESTED PARTY
GETRUDE CHOMBO INTERESTED PARTY

RULING

1. The application is dated 3rd July 2024 and is brought under Article 165 Section (6) and (7) of the Constitution of Kenya 2010: Section 13 of the Environment and Land Court Act - No. 19 of 2020. Section 1A, 3A, 63, Order 51 of the Civil 40 of the Civil Procedure Act and Rules respectively seeking the following orders;
 1. That this Application be certified urgent and heard *exparte*.
 2. That the Court be pleased to call for Court file ELC No. 159 of 2019 pending before the Chief Magistrate ELC Division Mombasa for directions as regards the judgement which has been pending for the last fourteen (14) months.
 3. That the Court to give directions as to costs.
2. It is supported by the grounds that this matter has been heard and determined and on 16th February 2023 the trial Court gave a judgement date for 4th May 2023. 2. That on the judgment day the same was not ready and the trial Court directed that the same was to be delivered by mail. The matter has come up on several occasions and judgment has not been read and delivered. 4.The delay to deliver the judgement is inordinate and amounts to a denial of justice to both the Plaintiffs and the Defendants. This Court should use its supervisory powers to call for the file and give directions. That in total the judgement has been pending for the last fourteen months that is to say one year and two months. That interest of justice requires that this Court comes in and rescues the file from further delays.
3. This court has considered the application and supporting affidavit annexed thereto. The respondents were served but failed to attend court or file any documents. The applicant wants the Court to call for Court file ELC No. 159 of 2019 pending before the Chief Magistrate ELC Division Mombasa for directions as regards the judgement which has been pending for the last fourteen (14) months. I find that this is an administrative matter and the applicant through their advocate ought to follow up with the letter dated 9th February 2024 to the court and address it to the Chief Magistrate himself and not the Administrator as this is a judicial function. I find this application is not merited and I dismiss it with no orders as to costs as it is undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2024.

N.A. MATHEKA

JUDGE

