



Rogito & 2 others (Suing as administrators of the Estate of the Late Henry Anunda Rogito) v Kenya Electricity Transmission Company Limited (KETRACO) (Environment & Land Case 339 of 2014) [2025] KEELC 2954 (KLR) (26 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2954 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 339 OF 2014**

**M SILA, J
MARCH 26, 2025**

BETWEEN

**KENNEDY ANUNDA ROGITO 1ST PLAINTIFF
GIDEON ANUNDA ROGITO 2ND PLAINTIFF
GEORGE ANUNDA ROGITO 3RD PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE HENRY
ANUNDA ROGITO**

AND

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED
(KETRACO) DEFENDANT**

RULING

(Application to set aside an order dismissing suit for failure to show cause why it should not be dismissed for want of prosecution; application allowed as no proof shown that the notice to dismiss was served upon the plaintiffs; suit reinstated)

1. The application before me is that dated 18 April 2024 but filed on 12 June 2024. In a nutshell, it seeks orders to reinstate this suit which was dismissed for want of prosecution on 23 March 2017. The application is based on grounds *inter alia* that the suit was dismissed without the knowledge of the parties; that the parties had been given a chance to negotiate a settlement which they did and as they proceeded to enter a consent to be adopted, the court file went missing. The application is supported by the affidavit of Kennedy Anunda Rogito, the 1st plaintiff. He has reiterated that the suit was dismissed without their knowledge and that they had been negotiating the matter which led to a consent dated 6 August 2018 which he has attached. He deposed that efforts to trace the file were futile and he has annexed a letter dated 26 September 2017 from his advocates to the Deputy Registrar, High Court,



- Kisii, bringing to his attention that they have been unable to trace the court file for purposes of filing a consent.
2. I note that the application as drawn bears a title with two defendants, that is a 1st defendant, Kenya Electricity Transmission Company Limited (KETRACO), and a 2nd defendant, Rose Ombati, but my perusal of the file shows only KETRACO as the sole defendant.
 3. The defendant has filed a replying affidavit sworn by Samwel Rambo, her Senior Legal Officer, to oppose the application. It is deposed that the suit was dismissed in March 2017 due to unwillingness and disinterest on the part of the plaintiffs to prosecute their case. He points out that the application has been brought 7 years after the case was dismissed which period is extremely lengthy and as such they are guilty of laches. He deposes that the matter is old and ought to have been concluded instead of clogging the justice system. He deposes that reinstating the suit will occasion the defendant prejudice as the application was not timeously brought.
 4. I directed counsel to file submissions to argue the application. Only Mr. Omagwa, for the defendant, filed submissions. Mrs. Morara, for the applicants, nevertheless made brief oral submissions more or less repeating what is in the supporting affidavit.
 5. I have considered all the above together with the court record.
 6. I see that the suit was commenced through a plaint filed on 29 August 2014. The plaintiffs pleaded that the defendant wished to compulsorily acquire the land parcel Bonyamoyio/Bosigisa/513 to construct a 132KV transmission line. They pleaded that they had not been consulted and they sought an order of permanent injunction to stop the construction of the said line. A defence was filed to the effect that the defendant plans to compensate land owners along the proposed route of this 132KV line. Together with the plaint, the plaintiffs filed an application for injunction to have the defendant stopped from any interference with the suit land pending hearing of the suit. I see that parties appeared before Okong'o J on 19 November 2014 and they stated that they were negotiating. The matter was next mentioned on 22 April 2015 but no counsel appeared and the case was stood over generally.
 7. Thereafter a Notice to Show cause why the suit should not be dismissed for want of prosecution was drawn with the notice stating that it will be heard on 23 March 2017. On 23 March 2017, the matter went before On'gondo J, who dismissed the suit as none of the parties attended.
 8. In this application, the applicants contend that the suit was dismissed without their knowledge. I have perused the file and I find no evidence that the Notice for dismissal was served upon any of the parties herein. Even in his replying affidavit, the respondent does not state that her counsel was served with the notice.
 9. It is therefore apparent to me that the suit was dismissed without the parties being served with the notice to show cause. The plaintiffs could of course not attend to show cause why their case should not be dismissed if they were not served with such notice.
 10. Without the notice being served, it was irregular for the suit to be dismissed.
 11. For reason that the notice was not served, I find merit in this application, and I set aside the order of dismissal. The suit is reinstated.
 12. I make no orders as the costs of this application.
 13. Orders accordingly.

DATED AND DELIVERED THIS 26 DAY OF MARCH 2025



**JUSTICE MUNYAO SILA
JUDGE, ENVIRONMENT AND LAND COURT
AT KISII**

Delivered in the presence of :

Mrs. Morara for the plaintiffs/applicants

Mr. Omagwa for the defendant/respondent

Court Assistant – Michael Oyuko

