



**Odongo v Oyuga (Environment & Land Case 168 of 2008)  
[2023] KEELC 16349 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16349 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 168 OF 2008**

**M SILA, J**

**MARCH 21, 2023**

**BETWEEN**

**MICHAEL ONDITI ODONGO ..... PLAINTIFF**

**AND**

**WILIKISTA AOKO OYUGA ..... DEFENDANT**

**RULING**

1. What is before me is an undated application that was filed on 2 November 2022 seeking orders to have this suit, which was dismissed for want of prosecution, reinstated for hearing on merit. That order of dismissal of suit was made on 23 July 2010. Nothing was filed to oppose the motion.
2. I have gone through the application and the court record. I observe that the applicant commenced this suit through an Originating Summons which was filed on 26 November 2008 through the law firm of M/s Oluoch Awino & Company Advocates. In the Summons, the applicant sought orders that by way of adverse possession, he has acquired title to the land parcels Suna East/Wasweta 1/12981 now subdivided into the parcel numbers 13086, 13087, 13089, 13090, 13091, 13092, 13094, 13095, 13096, and 13097.
3. On 26 November 2008, the applicant filed an application to have orders restraining the respondent from alienating or dealing with the suit properties pending hearing of the suit. The application was placed before Musinga J (as he then was) on the same day but the application was not certified urgent and the court directed that it be served upon the respondent. Nothing happened thereafter until the suit was listed for dismissal for want of prosecution and duly dismissed on 23 July 2010 when counsel for the applicant and the applicant failed to attend court to show cause why it should not be dismissed.
4. It is this order that was made on 23 July 2010 that the applicant now wants to set aside. The application has been filed through the law firm of M/s Thomas Muniko & Company Advocates and is supported by the affidavit of the applicant. He has deposed that he had instructed the law firm of Oluoch Awino



- & Company to prosecute this case. He avers that at that time the said firm was based in Migori town. He states that having given instructions he believed that the firm was handling the matter. He states that he learnt later that the said firm relocated to Nairobi and abandoned the case and efforts to reach the firm have been futile as he does not have the contacts or their physical location.
5. He states that he has been to the Kisii court registry to check on the matter and peruse the file but was informed that they can only give the file to the advocate on record. He did not give up but came back in the year 2015 when he was informed that the file could not be traced and that it had probably been taken to the archives in Kisumu. In the year 2020, he returned to Kisii and was informed that the Kisii registry is yet to get a feedback from Kisumu. He came back in the year 2022 and this time he was told that the file has been traced at Kisumu. He made a request for retrieval and the file was brought to Kisii. He perused the case and found that it had been dismissed for want of prosecution. He contends that he was let down by his erstwhile counsel on record.
  6. At the outset, I observe that this application has been brought after lapse of more than 12 years. The reasons given are that the law firm of M/s Oluoch Awino & Company Advocates relocated to Nairobi and abandoned the case. I have no evidence before me that the law firm of M/s Oluoch Awino & Co is currently based in Nairobi, and if it is, when exactly the firm relocated. Documentation regarding the place of business of a law firm is readily available from the offices of the Law Society of Kenya but the applicant has presented nothing to show that the said law firm truly relocated, and if so, when. I have not seen any letter written by the applicant to the Law Society of Kenya asking about the whereabouts of the law firm of Oluoch Awino & Company or the whereabouts of its proprietor to show that he was seriously looking for his counsel. Even assuming that the law firm did in fact relocate, the applicant has not stated when he found out this position. He only says that he found out 'later' without disclosing when. The applicant has mentioned that he used to come to Kisii Law Court registry to follow up on the matter but I have not seen any evidence of this. There is no correspondence from the applicant in the record of this file where the applicant is asking about the position of his case. I have not even seen any evidence that this file was ever taken to the archives in Kisumu and later returned in the year 2012. In essence, all the allegations of the applicant deposed in his affidavit are unsupported.
  7. Twelve years is a long time. If it was a judgment, Section 4 (4) of the *Limitation of Actions Act*, Cap 22, Laws of Kenya, would have caught up with it and such judgment would not be subject to execution. I think this treatment should be extended to an order as well. Assuming that the respondents had occasion to peruse the file and observed that it had been dismissed, would it be fair to now have them served with an order, 12 years later that the suit is reinstated? As I have mentioned, if it was a judgment, the respondents would be entitled to believe that the judgment is now stale and cannot be executed. I do not think that it should be the position that an order can be left for an indefinite amount of time to be set aside when the applicant feels like waking up. If the applicant was keen to revive the dismissed case, there was ample opportunity to do so for the last 12 years. In my view the significant lapse of time militates against setting aside the order of dismissal of this suit for want of prosecution. I wouldn't wish to set a precedent that a person can leave a matter in court unattended for more than 12 years and believe that he can simply walk in and have it revived. It will indeed be a very special case for such an applicant to get such order and I see no special circumstances herein. All I have heard are unfounded allegations and my impression is that the applicant has been too indolent to deserve the discretion of this court. Equity aids the vigilant and not the indolent.
  8. For the above reasons, I find no merit in this application and it is hereby dismissed. The result is that the order made on 23 July 2010 subsists meaning that this suit remains dismissed for want of prosecution.
  9. Orders accordingly.



**DATED AND DELIVERED THIS 21 DAY OF MARCH 2023**  
**JUSTICE MUNYAO SILA**  
**JUDGE**

