



**Papu v Waweru & another (Environment & Land Case  
263 of 2017) [2023] KEELC 17630 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17630 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 263 OF 2017**

**MN GICHERU, J**

**MAY 29, 2023**

**BETWEEN**

**KEREBU KASARO PAPU ..... PLAINTIFF**

**AND**

**RICHARD NGATIA WAWERU ..... 1<sup>ST</sup> DEFENDANT**

**PATRICK GUKURA MURAYA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 10/12/2021. The motion which is brought under Order 12 Rule 7 *Civil Procedure Rules*, sections 1, 1A, 3 and 7 of the *Civil Procedure Act*, sections 3 and 19(1) and (2) of the *Environment and Land Court Act*, article 159 (d) of the *Constitution* of Kenya and all enabling provisions of the law seeks to set aside the order dated 2/11/2021 which dismissed the Plaintiff's suit for non attendance by him and his counsel.
2. The motion which is supported by eighteen grounds, two affidavits and a few annexures pleads that failure to attend court on the hearing date was caused by inadvertence on the part of the counsel who was proceeding on maternity leave and failed to hand over the file to another counsel.
3. The motion is opposed by the two defendants. the first defendant has sworn a replying affidavit dated 30/5/2022 in which he deposes that the suit has been pending for over ten (10) years and on 10/4/2017 he had filed an application to dismiss the suit for want of prosecution. He was persuaded by the court to abandon the application but even after doing so, the plaintiff has not been diligent in prosecuting the same and no valid reasons has been given for non-attendance by the plaintiff and his counsel on 2/11/2021 when the suit was dismissed.
4. On the part of the second defendant, his counsel has filed a replying affidavit dated 30/5/2022 in which he says that the hearing date of 2/11/2021 was taken by consent on 15/4/2021. On the hearing date, Mr. Mukuha Kamau appeared in the virtual court but failed to appear in the physical one. Even the



Plaintiff was absent and Caroline Onyutta advocate who was said to have been on maternity leave and whose mistake occasioned the nonattendance did not even swear an affidavit. The second defendant's counsel also filed seven grounds of opposition which are also dated 30/5/2022.

5. Counsel or the parties were to file and exchange written submissions by 30/3/2023 but I do not see any submissions by any of the counsel.
6. I have carefully considered the application dated 10/12/2021 in its entirety including the affidavits, annexures, grounds of opposition, the entire record and what transpired on 2/11/2021 when the Plaintiff's suit was dismissed.
7. I find that it is fair and just to allow the notice of motion dated 10/12/2021 because the record shows that the plaintiff has in fact testified in this case and it is the two defendants who have more than twice adjourned the case on account of having been out of the country and away in Nakuru. I however warn all the parties that in future no adjournments will be entertained on the grounds of absence of the parties or their counsel. In conclusion therefore, the notice of motion dated 10/12/2021 is allowed. Costs in the cause.
8. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 29<sup>TH</sup> DAY OF MAY, 2023.**

**M.N. GICHERU**

**JUDGE**

