



**Muthare & 9 others v Land Adjudication and Settlement Officer Tigania East and West  
& another; Amuthumba/Ngaremara Pastoralists Community - Based Organization  
(through the Chairman Justus Mugaa Impui) (Interested Party) (Environment  
& Land Case 23 of 2018) [2023] KEELC 17509 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17509 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 23 OF 2018**

**CK NZILI, J**

**MAY 24, 2023**

**BETWEEN**

**JOSEPH M’KUBANIA MUTHARE ..... 1<sup>ST</sup> PLAINTIFF  
JACOB MUTITHIA M’IKIYU ..... 2<sup>ND</sup> PLAINTIFF  
DORCAS NKOYAI NKUBIRIA ..... 3<sup>RD</sup> PLAINTIFF  
AGATA N. ANDRIANO ..... 4<sup>TH</sup> PLAINTIFF  
JOYCE GACHERI GATOBU ..... 5<sup>TH</sup> PLAINTIFF  
LUCY NKATHA KIREMA ..... 6<sup>TH</sup> PLAINTIFF  
CHRISTINE KALULU ..... 7<sup>TH</sup> PLAINTIFF  
JEREMIAH KAILIKIA ..... 8<sup>TH</sup> PLAINTIFF  
JULIUS NGIRI ..... 9<sup>TH</sup> PLAINTIFF  
JOHANA GICHUNGE M’LARIA ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**LAND ADJUDICATION AND SETTLEMENT OFFICER TIGANIA EAST AND  
WEST ..... 1<sup>ST</sup> DEFENDANT  
MERU COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**AMUTHUMBA/NGAREMARA PASTORALISTS COMMUNITY - BASED  
ORGANIZATION (THROUGH THE CHAIRMAN JUSTUS MUGAA  
IMPUI) ..... INTERESTED PARTY**



## RULING

1. By an application dated March 24, 2023, the court is asked to reinstate the suit by reviewing the order dated 6.3.2023 and hear the matter on merits. The grounds are contained on the face of the application and the supporting affidavit of Duncan K Muthuri sworn on March 24, 2023. It is deposed that the suit was due for mention on 6.3.2023 and was struck out for non-compliance with pretrial directions issued on February 1, 2023. The applicant averred that the interested parties were enjoined in the suit through a ruling dated February 1, 2023, and they should have filed a defence.
2. That the pretrial was conducted before the interested party joined the suit. The applicant contends that the plaintiffs would not file their compliance documents before the interested parties filed their defence.
3. A replying affidavit of Kaume Mukiira opposes the application advocate sworn on 14.4.2023, on the basis that the application lacks merits, it is out to clog the court process, and the failure to file a defence by the interested party did not warrant the applicant not to comply with the court's directions. Counsel for the plaintiffs failed to appear in court, and he was trying to apportion blame on the interested parties.
4. The court record shows that after the ruling dated February 1, 2023, parties were directed to comply with order 11 of the *Civil Procedure Rules* within 30 days.
5. By the time directions were given, only the 1<sup>st</sup> and 2<sup>nd</sup> defendants had filed paginated bundles dated April 27, 2021 and December 6, 2021 respectively. None had been filed by the plaintiffs/applicants. No specific prayer was requested, an order was made on February 1, 2023 and any timelines issued for the interested parties to file defences.
6. The law is that an interested party is not a principal party to a suit and cannot replace the main parties or direct the same on how they should undertake their litigation. Trying to apportion blame where the buck stops with the plaintiffs only confirms that the plaintiffs have not been keen to prosecute the suit and are out to delay it by not complying with court orders.
7. Order 11 of the *Civil Procedure Rules* is more expansive than merely filing the witness statements. The applicants did not even attempt to explain their non-attendance, yet they were to confirm full compliance with Order 11 of the Rules.
8. Similarly the applicants did not confirm in this application that they had subsequently prepared and filed a paginated bundle of records ready to have the hearing of the matter. The applicants believe they should be at liberty to ignore court directives, yet the same was made to fast-track the hearing of their suit. Counsel swearing the applicant's affidavit did not show remorse or offer any apology or explanation for not attending court and leaving the court with no option but to give orders as required under order 11 of the *Civil Procedure Rules*, where parties such as his clients fail to comply with court directives. There must be good reasons for non-compliance for the court to exercise its discretion and set aside the dismissal order. The prejudice likely to be occasioned on the respondents has also not been addressed, including an offer to pay throw-away costs.
9. I find no good reasons to set aside the dismissal orders. This suit was filed in 2018 and did not take off out of endless adjournment contributed by the plaintiffs. The claim was merely struck out with costs and not dismissed. Therefore, I find no merits in this application, which is dismissed with costs. File closed.



**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 24<sup>TH</sup> DAY OF MAY 2023**

**In presence of**

C.A John Paul

Gichunge for applicant

Mbaikyatta for 1<sup>st</sup> respondent

Kaume for the interested party

**HON. C.K. NZILI**

**ELC JUDGE**

