



Ngatya (Suing on behalf of Henry Angatia Bwire) v Otabat & another (Environmental and Land Originating Summons 132 of 2015) [2025] KEELC 1354 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 132 OF 2015**

**BN OLAO, J
MARCH 20, 2025**

BETWEEN

MELISA ANDAYI NGATYA (SUING ON BEHALF OF HENRY ANGATIA BWIRE) PLAINTIFF

AND

AUGUSTINE OMELE OTABAT 1ST DEFENDANT

OBARASA OTABAT MUSA 2ND DEFENDANT

RULING

1. Melisa Andayi Ongatya (the Plaintiff herein) first moved to this Court vide her Originating Summons dated 20th November 2015 and filed on the same day in which he impleaded Augustine Omele Otabat and Obarasa Otabat Musa (the Defendants) seeking judgment that he has acquired the land parcel No South Teso/charkol/321 by way of adverse possession. The Defendants opposed the suit.
2. After several interlocutory applications, this suit was listed for hearing on 8th November 2022.
3. On that day, however, there was no appearance by the Plaintiff although her then counsel Mr Ashioya attended and sought time to file an application to cease acting for her. Mr Bogonko for the Plaintiff objected and having considered the history of the matter, I dismissed the Plaintiff's suit with costs.
4. That dismissal order prompted the Plaintiff to approach this Court vide her Notice of Motion dated 1st February 2023 seeking the reinstatement of the dismissed suit.
5. Having considered the Motion, I delivered a ruling on 25th April 2023 reinstating the dismissed suit.
6. The suit has come up for hearing this morning and Mr Mabachi holding brief for Mr Omeri, who is infact yet to come on record for the Plaintiff, addressed me nonetheless stating that Mr Omeri seeks time to familiarize himself with the file and further, that the Plaintiff is unwell. Mr Otanga counsel for



the Defendants opposed the application for adjournment stating, inter alia, that the Plaintiff has been evading the Court since 2015 yet this case had been previously dismissed but subsequently reinstated vide my ruling delivered on 25th April 2023. Then on 2nd December 2024, the Plaintiff was granted an adjournment on the ground that her counsel was unwell. The Plaintiff has now waited until yesterday to change counsel and her conduct can only be described as that of a party who does not want to be heard. Counsel sought dismissal of the suit.

7. In response Mr Mabachirepeated that the Plaintiff is unwell and had disagreed with her previous counsel. The Court should do justice to the Plaintiff by granting her the very last adjournment. And even after I had directed that I would be delivering my ruling today, Mr Mabachicontinued to address me seeking 30 minutes to avail the Plaintiff. When I asked counsel whether he would remove the Plaintiff from her sick bed, he replied that he was trying to forestall any repercussions which will arise when the suit is dismissed.
8. While I appreciate Mr Mabachi's tenacity, verve and vigour in his attempt to save the Plaintiff's suit, it is clear to me that I have no other option than to dismiss this suit, unfortunately for a second time. In my ruling delivered on 25th April 2023 reinstating the Plaintiff's suit, I stated in paragraph 15 thus:

“There is no doubt that this Court has the discretion to reinstate a suit which has been dismissed. A Court's main mandate is to do justice to the parties before it. Such discretion must be exercised judiciously to avoid any injustice to the opposite party.”

I then proceeded to state in paragraph 16 thus:

“I am not persuaded that the Plaintiff herein has sought deliberately to obstruct or delay the cause of justice. It is clear that she was let down by her counsel and it would be unfair to allow the dismissal orders dated 8th November 2022 to stand.”

One would have expected that having been given a life line by this Court in a matter which is now ten (10) years in Court, the Plaintiff and her counsel should have put their house in order. Today, the Court has been informed that the Plaintiff's new counsel seeks time to familiarize himself with the file and that the Plaintiff is unwell. No medical chit has been availed although MR MABACHI stated from the bar that the Plaintiff has malaria. Today's hearing was fixed way back on 2nd December 2024 some three (3) months ago and on that date, the Court accommodated the Plaintiff who had said that her counsel was unwell. She did not have to wait until the eve of the hearing date to instruct another counsel who, from the Court record, has not even filed his notice of appointment. This Court must be persuaded, as stated by MR OTANGA, that the Plaintiff “is a party who does not want to be heard.” While the Plaintiff has a right to instruct a counsel of her choice, to do so on the eve of the hearing in a matter in which she has been indulged severally, can only be a demonstration of her lack of interest in pursuing her claim. This must also be considered in light of the fact that there is a huge turn-over of counsel in this matter. When I reinstated the dismissed suit, I emphasized that she had the right to be heard. That time her then counsel was to blame. This time, I must inform her that just as she has the right to be heard, the Defendants also have the right to have this suit which has been hanging over their heads since 2015 heard and determined expeditiously. Justice, it is said, is a double-edged sword. It cuts both ways. The interests of justice face both sides. The Plaintiff's side and the Defendant's side.



9. Order 12 Rule 3 (1) of the Civil Procedure Rules is emphatic. It states:

“If on the day fixed for hearing, after the suit has been called on for hearing outside the Court, only the Defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the Court.” Emphasis mine.

Notwithstanding the valiant efforts by MR MABACHI to further adjourn this suit, I am afraid I do not discern any “good cause” why I should do so. The Plaintiff has been accommodated before. I am not persuaded to do so again.

10. The upshot of all the above is that the Plaintiff’s suit is dismissed with costs.

BOAZ N. OLAO

JUDGE

20TH MARCH 2025

**RULING DATED, SIGNED AND DELIVERED ON THIS ON THIS 20TH DAY OF MARCH 2025
BY WAY OF ELECTRONIC MAIL.**

BOAZ N. OLAO

JUDGE

20TH MARCH 2025

