



**Mwangaza Ministry & another v Ndirangu (Environment & Land Case E188 of 2021) [2023] KEELC 20028 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20028 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E188 OF 2021  
LN MBUGUA, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**MWANGAZA MINISTRY ..... 1<sup>ST</sup> PLAINTIFF**

**MUTUINI LAND OWNERS ASSOCIATION ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JANET NDIRANGU ..... DEFENDANT**

**RULING**

1. Before me is the plaintiff's application dated June 6, 2023 seeking orders for the reinstatement of the suit which was dismissed on May 25, 2023. The application is supported by the affidavit of their advocate, one Isaac Munyambu. He contends that when he logged in at 9.00am on May 25, 2023, he found the court in session. He never heard the case being called out. Upon inquiry, he was informed that the case had been called out and dismissed.
2. When the application came up for hearing on July 11, 2023, the counsel for the respondents informed the court that they had a replying affidavit dated July 7, 2023. The court gave directions for the application to be heard by way of written submissions of which the applicant was to file/ serve their submissions by July 21, 2023, while the respondent were to file theirs by August 1, 2023.
3. When I retired to write the ruling, I searched for the documents in the digital platform. I did not find the replying affidavit allegedly dated July 7, 2023. Equally, I did not see any submissions by the applicants.



4. It follows that the application dated June 6, 2023 is unopposed. In Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, the court stated as follows in respect of unopposed applications;

“Be that as it may, as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders. It behooves the court to be satisfied that *prima facie*, with no objection, the application is meritorious and the prayers may be granted”.
5. Guided by the above decision, I proceed to determine the merits of the application.
6. In the case of *Mwangi S. Kimenyi v Attorney General and another* [2014] eKLR the court stated that;

“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case”.
7. A close scrutiny of the proceedings in this suit consistently indicate that the plaintiff herein has not been a vigilant litigant. After the court dismissed their application for injunction on November 3, 2021 in the presence of their advocates, the court set the suit down for pretrial directions on February 15, 2022. The plaintiffs and their advocates however did not turn up. The court went ahead and conducted pretrial exercise and listed the matter for hearing on October 11, 2022. On this date, the court adjourned the case to May 25, 2023 in the presence of plaintiff’s advocates. Come the date of May 25, 2023 and again the plaintiffs and their advocates were not present and the matter was dismissed.
8. It is noted that the plaintiffs had in the course of time filed another application dated December 8, 2022 seeking injunctive orders against the defendants, about a month after the dismissal of their earlier application dated May 28, 2021 still seeking injunctive orders against the defendants. The court had given directions for the application (dated December 8, 2022) to be heard on February 22, 2023. However, on that day of February 22, 2023, there was no appearance for the plaintiffs, even though the defendants were present. The application was dismissed.
9. In the case of *Moscibion v Mwangi* (Environment & Land Case 350 of 2018) [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling). I stated as follows;

“The right to be heard is sacrosanct and is embodied in the latin maxim “*audi alteram partem*”. However, a party is only entitled to reasonable opportunity to be heard, See *Nginyanga Kavole v Mailu Gideon* (2019) eKLR ..... this is a situation whereby the plaintiff has driven herself from the seat of justice.”
10. The provisions of section 43 of the ELC Practice directions of July 25, 2014 as well as the provisions of order 11 rule 3 (5) of the *Civil Procedure Rules* stipulate that none compliance of court orders can attract a dismissal.
11. This is a matter where by the plaintiffs brazenly disregards the directions given by the court. They could not even comply with directions on filing of submissions herein.
12. It is also noted that on the date the matter was dismissed, the opponents were diligently present in court. In the circumstances, I find that the application dated June 6, 2023 is not merited, the same is hereby dismissed with costs to the defendants.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21st DAY OF SEPTEMBER, 2023  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**Khaminwa for Plaintiffs**

**Alosa for Respondent**

**Court Assistant: Eddel**

