



**Odongo v Oyunga (Environment & Land Case 168 of 2008)  
[2023] KEELC 20820 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20820 (KLR)

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

**M SILA, J**

**OCTOBER 19, 2023**

**BETWEEN**

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

**AND**

**WILKISTA AOKO OYUNGA ..... DEFENDANT**

**RULING**

1. The application before me is that dated 31 July 2023 by the applicant in this Originating Summons. The application seeks orders the following orders :-
  - i. Certification of urgency.
  - ii. That the law firm of M/s L.A Ooro & Company Advocates be granted leave to come on record for the applicant.
  - iii. That this court be pleased to set aside the order given on 16 March 2023 dismissing the application to reinstate this suit dated 11 November 2022.
  - iv. That this suit be reinstated and the same be heard on merit.
  - v. Costs of the application be provided for.
2. . The application is supported by the affidavit of the applicant, Michael Onditi Odongo. The prayer to allow change of counsel was granted when the application came before court ex parte in the first instance and the only substantive order left is prayer (iii) and (iv) above.
3. The history of the matter is that the applicant commenced this suit through an Originating Summons filed on 26 November 2008 wherein he sought orders to be declared the owner, by way of adverse possession, of the land parcels Suna East/Wasweta I/12981 subdivided into the land parcels Nos. 13086, 13087, 13089, 13090, 13091, 13092, 13094, 13095, 13096 and 13097. He did not take any



steps to prosecute the case and it was dismissed for want of prosecution on 23 July 2010. Nothing happened until 2 November 2022, when an application to reinstate the dismissed suit was filed. I heard the application on 15 February 2023, when Mr. Morigori held brief for Mr. Muniko, then on record for the applicant, and he urged me to allow the application. I reserved ruling for 16 March 2023, but I did not sit on that day, owing to illness, and a notice was issued that I will deliver the ruling on 21 March 2023 which I duly did. There was no appearance on the part of counsel for the applicant when the ruling was delivered.

4. Subsequently, this application was filed.
5. It will be observed that prayer (iii) of this application, as drafted, seeks an order to set aside the ruling of 16 March 2023. That is clearly an error because the ruling, as I have explained above, was actually delivered on 21 March 2023. Be that as it may, I have looked at the reasons why the applicant wants to set aside that ruling and I think the applicant is mistaken. He believes that the application was dismissed for failure to attend court to prosecute it which is not the case. The application was not dismissed for failure to attend court during the date of delivery of the ruling or for failure to prosecute it. It was dismissed on merits upon consideration. Indeed, in my ruling of 21 March 2023, I found that the applicant had gone to sleep and the order of dismissal for want of prosecution was properly made. I was not moved to reinstate the suit. In essence, I have already substantively addressed myself on the application for reinstatement of suit and I do not have jurisdiction to consider the application afresh as that would violate the res judicata rule.
6. If the applicant is aggrieved by my reasoning and ruling of 21 March 2023, his avenue is to seek an appeal, or review, not to ask me to hear the application afresh.
7. For the above reasons, I do not find any merit in this application and it is hereby dismissed. I make no orders as to costs as there was nothing filed to oppose it.
8. This suit thus remains dismissed.
9. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 19 DAY OF OCTOBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

