



**Sule v Otieno & 3 others (Environment & Land Case 30 of 2017)  
[2023] KEELC 22360 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22360 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 30 OF 2017  
E ASATI, J  
DECEMBER 14, 2023  
IN THE MATTER OF LAND PARCEL NO.  
KISUMU/WATHOREGO/916 AND RESULTANT SUBDIVISION  
INTO LR NO. KISUMU/WATHOREGO/5155,5156 AND 5157  
AND  
IN THE MATTER OF SECTION 38 OF THE LIMITATION OF  
ACTIONS ACT CAP 22 LAWS OF KENYA  
AND  
IN THE MATTER OF ORDER 37 RULE 7(1) CIVIL PROCEDURE  
RULES**

**BETWEEN**

**PEREZ ATIENO SULE ..... PLAINTIFF**

**AND**

**SELINA AOKO OTIENO ..... 1<sup>ST</sup> DEFENDANT**

**KEVIN KEEGAN OTIENO ..... 2<sup>ND</sup> DEFENDANT**

**MARY AKOTH OTIENO ..... 3<sup>RD</sup> DEFENDANT**

**RAYMOND ODUOR MUHULA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 30/1/2023 brought by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The substantive prayer in the application is prayer No. (d) which is a prayer for setting



aside of the judgement and for the applicants to be allowed to file and serve replying affidavit to the amended originating summons.

2. The grounds upon which the application is brought are that the applicants have a good and plausible response against the Plaintiff's claim as set out in the amended originating summons. That the applicants were not served with either the originating summons, amended originating summons or any notice to appear in court. That they came to know about the case when they were served with a letter from Otieno, Yogo, Ojuro & Co. Advocates to attend court on the judgement date. That the applicants should be given a chance to be heard in line with the rules of natural justice. That the plaintiff will not suffer prejudice if the application is allowed.
3. The application was supported by the averments in the Supporting Affidavit sworn by the applicants jointly on 30/1/2023 and the response to replying affidavit sworn on 27/3/2023 by the applicants jointly.
4. The application was opposed vide the contents of the replying affidavit sworn on 5<sup>th</sup> february 2023 by the plaintiff. The plaintiff's case is that the applicants were served with the originating summons whereupon they instructed the firm of Otieno, Yogo, Ojuro & Co Advocates who entered appearance on their behalf and on behalf of the 1<sup>st</sup> defendant and represented them. that the 1<sup>st</sup> defendant is the mother of the applicants. That the application is fatally defective.
5. Though the applicants describe the judgement as default judgement, the record shows that the applicants participated in the proceedings that lead to the judgement. They were competently represented by counsel throughout the proceedings. The judgement was not ex parte or in default of appearance and defence in so far as it concerns the present applicants. The record also shows that the applicants presented their defence to the Plaintiff's claim vide the detailed replying affidavit sworn by the 1<sup>st</sup> defendant on their behalf.
6. No sufficient grounds have been disclosed for setting aside the judgement. Application is hereby dismissed. costs to the plaintiff.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 14<sup>TH</sup> DAY OF DECEMBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

No appearance for the Plaintiff/Respondent.

2<sup>nd</sup> Respondent/Applicant present in person.

3<sup>rd</sup> Respondent/Applicant present in person.

Odeny for the 4<sup>th</sup> Respondent

