



**Yatich v Daudi & another (Environment & Land Case E028 of 2021)  
[2023] KEELC 22241 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22241 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E028 OF 2021  
EO OBAGA, J  
DECEMBER 7, 2023**

**BETWEEN**

**MARK CHEBON YATICH ..... APPLICANT**

**AND**

**KANDIE C DAUDI ..... 1<sup>ST</sup> RESPONDENT**

**ESTHER WALUMBE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 25.7.2023 in which the plaintiff/applicant seeks to have the orders of 12.10.2022 dismissing the plaintiff's suit reviewed and set aside. The applicant contends that when this case was placed before the Deputy Registrar for mention, his Advocate was unable to log in. His advocate thereafter lost track of the suit. When the Applicant's lawyer inquired on the status of the case, he was informed that the suit had been dismissed by the court on 12.10.2022.
2. The Applicant states that as at the time the suit was dismissed, he had instructed his Advocate to have the matter transferred to the lower court for expeditious disposition. He further states that the parties were in active negotiation with a view to recording a consent and that they were about to record a consent and file it in court. He states that mistakes of counsel should not be visited upon the litigant.
3. The applicant's application was opposed by the respondents based on grounds of opposition filed on 2.10.2023. The respondents contend that this court is functus officio and that the Applicant should have appealed against the dismissal order. The respondents further contend that the court is being asked to sit on appeal in its own decision and that in any case, the Applicant has not met the conditions for setting aside or review of the orders of the court.
4. The parties were each given 7 days to file written submission. As at 9.11.2023, no party had filed submissions. I have considered the Applicant's application as well as the opposition to the same by the



Respondents. The only issue for determination is whether this court should exercise its discretion in favour of the Applicant.

5. In order to discharge the exercise of my discretion, the background of this case is necessary. The Plaintiff filed this suit on 27.4.2021. There were no documents filed or witness statements filed as required by the Civil Procedure Rules. The Applicant contemporaneously filed a Notice of Motion in which he sought injunctive orders. When the application was placed before the Judge on 28.4.2021, it was not certified urgent. The Applicant was directed to take a date at the registry.
6. The Applicant's Advocates took a mention date before a Judge to fix a hearing date for the application. The matter was mentioned before the Judge on 24.6.2021 when the application was fixed for mention on 19.10.2021. On 19.10.2021 counsel for the Respondents indicated to court that he had been instructed the previous day and had only entered appearance. He prayed for time to respond to the application for injunction. The Respondents' counsel's request was granted and the application was adjourned to 24.11.2021.
7. Come 24.11.2021, the parties did not appear for hearing of the application for injunction. The Respondents had also not filed a replying affidavit to the application. The application dated 21.4.2021 was dismissed for non attendance and the court fixed the case on 26.1.2022 before the Deputy Registrar for parties to comply with pre-trial procedures. The matter was not placed for mention before the Deputy Registrar as directed. The Applicant's counsel took a mention date at the registry for 4.7.2022. The date was taken on 11.3.2022.
8. On 4.7.2022, neither the Applicant's counsel nor the Respondents' counsel were in court. The court directed that the matter be mentioned on 12.10.2022. The court directed that the mention notice be served by the court. Though there was a notice of change of Advocates filed on 25.1.2022 on the part of the Plaintiff, the Notice of change appears not to have been served upon the previous Advocates because the previous Advocates of the Plaintiff are the ones who took the mention date of 4.7.2022 on 11.3.2022.
9. The Advocates for the parties were served with mention notice of 12.10.2022 by the court but there was no appearance on both the Applicants' side and the Respondents' side. The court then proceeded to dismiss the suit as it was apparent that the parties had no interest in the suit.
10. From the background above, it is clear that both the Applicant and the Respondents were not keen on proceeding with this matter. The Applicant knew that the suit property was within the jurisdiction of the Chief Magistrates Court and ought to have been filed there. He cannot use the excuse of transfer and negotiations to persuade the court to set aside the dismissal.
11. The Advocates for the Applicant have been casual in the manner they have handled this suit. There were no witness statements or documents filed. The Respondents have also not bothered to file defence and their documents. The exercise of the court's discretion should not be exercised in favour of a party who is clearly intent on delaying the course of justice. The application to set aside dismissal was made 8 months after the dismissal. Cases ought to be disposed of expeditiously. The Applicant is seeking to set aside the orders issued on 16.2.2023. There were no orders issued on 16.2.2023. This shows how casual this matter is being handled. I find no merit in the Applicant's application which is dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 7<sup>TH</sup> DAY OF DECEMBER, 2023.

**E. O. OBAGA**



**JUDGE**

In the virtual absence of parties who were informed of the date for ruling.

Court Assistant - Laban

**E. O. OBAGA**

**JUDGE**

**7<sup>TH</sup> DECEMBER, 2023**

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