



**Maranga (Suing on His Behalf as the Administrator and Beneficiary of the Estate of Daniel Maranga Kamau) v Mugo & another (Environment & Land Case 504 of 2017) [2025] KEELC 3443 (KLR) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3443 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE 504 OF 2017**

**MN GICHERU, J**

**APRIL 23, 2025**

**BETWEEN**

**JOAKIM PETER KAMAU MARANGA (SUING ON HIS BEHALF AS THE ADMINISTRATOR AND BENEFICIARY OF THE ESTATE OF DANIEL MARANGA KAMAU) ..... PLAINTIFF**

**AND**

**NELSON MUGO ..... 1<sup>ST</sup> DEFENDANT**

**MARY NYAMBURA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the amended notice of motion dated 23-2-2024. The motion which is by the Plaintiff is brought under Orders 12 rule 7, 45 rule 1 and 51 rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law.
2. The motion seeks the following orders.
  1. Setting aside the order of dismissal of this suit issued on 28-11-2023.
  2. Reinstatement of the suit and directions as to the hearing and determination of the suit.
  3. Review, variation and/or setting aside of the ruling/order dated 22-11-2018.
  4. Any direction, order and/or any further relief that may be deemed incidental, fair and just in the circumstances hereof.
  5. That the costs of this application be provided for.
3. The motion is based on twelve(12) grounds and is supported by an affidavit sworn by the Plaintiff dated 23-2-2024. The said affidavit has three (3) annexures.



The gist of the grounds and the affidavit is as follows. One, this court dismissed this suit on 28-11-2023 for want of prosecution. Two, the Plaintiff has always been keen on prosecuting the suit and there was confusion caused by the matter proceeding in this court and Kangema Magistrate's Court. Three, the Plaintiff and his advocate only became aware of the dismissal of this suit when they visited the ELC registry at Murang'a for filing of the notice of motion dated 9/2/2024. Four, the Plaintiff had already withdrawn the Kangema case and if this suit is not reinstated, he will suffer irreparable loss as the subject matter is ancestral land on which they live and have heavily invested in. Five, the ruling of 22-11-2018 failed to consider the reasons that prompted the application to withdraw the Kangema Magistrate's Court case. For the above and other reasons, the Plaintiff prays that the motion be allowed and the suit be heard on merit.

4. The motion is opposed by the Defendants who have filed grounds of opposition dated 18-3-2024 and a replying affidavit by the second Defendant also dated 18-3-2025. The basis for opposing the motion is as follows. One, the threshold in Order 45 rule 1 of the Civil Procedure Rules for reviewing the dismissal order has not been met. Two, there has been inordinate delay on the part of the Plaintiff.

5. Counsel for the parties filed written submissions dated 6-9-2024 and 20-9-2024 respectively.

The issues identified in the submission are as follows.

a. Whether this suit should be reinstated.

b. Whether the ruling date 22-11-2018 staying this suit should be reviewed.

6. I have carefully considered the motion in its entirety including the grounds in support, the supporting affidavit, the replying affidavit, the grounds of opposition, the entire record, the submissions by learned counsel for the parties and the law cited therein. I make the following findings on the issues raised.

7. On the 1<sup>st</sup> issue, I find that the suit should be reinstated for the following reasons. Firstly, the Plaintiff claims not to have been aware that the case was listed for notice to show cause on 28-11-2023. Though there was service via email on 22-9-23, it is still possible that counsel for the Plaintiff did not read the said mail. Secondly, the record shows that the Plaintiff's side has always appeared in court as and when required. All the efforts and struggles to be heard over the years since 2012 should not be overlooked because of one incident. Thirdly, this suit involves land which is said to have been occupied by the Plaintiff for a long time. To fail to hear the suit and to lock out a party craving to be heard would be falling short of Article 50(1) of *the constitution* which guarantees every person having a dispute that can be resolved by the application of the law, a fair hearing. A fair hearing should excuse a small mistake like failing to attend the court once. Finally on this point, no prejudice will be occasioned to the Defendants because, they too will be heard.

8. On the second issue, I find that the order of 22-11-2018 should be reviewed because there is an error apparent on the face of the record. On 30/7/2014 the Principal Magistrate Kangema found that he had no jurisdiction in the matter. Then on 13-8-2018, the then Plaintiff filed a notice of withdrawal of the suit at Kangema Court. This means that when this court directed the Kangema Court to proceed with case No. SPMCC 30/2012, there was no such suit. This amounts to an error apparent on the face of record and calls for review of the order of 22-11-2018 under Order 45 rule 1 of the *Civil Procedure Act*.

For the above stated reasons, I find merit in the notice of motion dated 23-2-2024 which I allow in terms of prayers 1,2 and 3. Costs in cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23<sup>RD</sup> DAY OF APRIL , 2025.**

**M.N. GICHERU**



## **JUDGE**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Miss Karita

Defendants' Counsel – Mr. Muirur

