



**Omuruya v Machengo & 2 others (Environment & Land Case  
68 of 2016) [2022] KEELC 3345 (KLR) (30 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3345 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 68 OF 2016  
DO OHUNGO, J  
MAY 30, 2022**

**BETWEEN**

**JOHN ANANGWE OMURUYA ..... PLAINTIFF**

**AND**

**ANERKO JUMA MACHENGO ..... 1<sup>ST</sup> DEFENDANT**

**ASMAN OMUSIKOYO SAKA ..... 2<sup>ND</sup> DEFENDANT**

**PHILIP HAGAI AMBANI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By Notice of Motion dated December 9, 2021, the defendants seek the following orders:
  - A. [Spent]
  - B. That the honourable court be pleased to discharge, vary the orders dismissing this suit and the same be re-instated to be heard to be heard on priority basis.
  - C. That costs of this application be provided.
  - D. Further other orders as the court deems fit to grant.
2. The application is supported by an affidavit sworn by Aneriko Juma Machengo. He deposed that upon being sued by the plaintiff, he and his fellow defendants entered appearance and filed defence. That due to financial constraints, they were not able to confirm the position of the matter after attending court and were later surprised to learn that the suit had been dismissed for want of prosecution. He added that the cause action exists and that they are yet to process the title deed.
3. Although evidence of service was availed, the plaintiff neither filed a response nor attended court at the hearing of the application. The defendants relied on the material on record and urged the court to render a ruling.



4. The record herein shows that this suit was filed on April 29, 2016. The plaintiff sought eviction of the defendants, who he described as members of Tumaini Baptist Church, from the parcel of land known as S/Wanga/Ekero/4480, which he stated belonged to him. The defendants reacted to the plaint by filing a document titled “Respondents Reply to the Plaint” in which they urged the court to dismiss the suit with costs.
5. The record further shows that the suit was dismissed for want of prosecution on July 25, 2018. The present application was filed on December 9, 2021, almost three and a half years after the dismissal. While the applicants have attempted to explain their failure to prosecute the suit, they have not clearly disclosed the date when they knew the suit had been dismissed. They have not offered any explanation for the delay of about three and a half years, which is inordinate.
6. The other important aspect of the application is that it is made by the defendants and not the plaintiff. The defendants herein do not have any counterclaim. The plaintiff has opted not to react to the application. In those circumstances, I see no valid reason to reinstate the suit only for the defendants to once again pursue its dismissal through a hearing. They have through other means achieved the dismissal of the suit.
7. In view of the foregoing, I find no merit in Notice of Motion dated December 9, 2021. I dismiss the application with no order on costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF MAY 2022.**

**D O OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**

**No appearance for the plaintiff**

**No appearance for the defendants**

**Court assistant: E Juma**

