



**M’Mweti v Land Adjudication and Settlement Officer Igembe District &
2 others; M’Imweti & 19 others (Interested Parties) (Environment & Land
Petition 7 of 2010) [2022] KEELC 3631 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3631 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION 7 OF 2010
CK NZILI, J
MAY 18, 2022
IN THE MATTER OF ARTICLES 22 (1) & (4), 23 (1) & (3) AND
ARTICLE 40 OF THE CONSTITUTION OF KENYA**

BETWEEN

BETWEEN

SILAS KINYUA M’MWETI PETITIONER

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER IGEMBE
DISTRICT 1ST RESPONDENT**

DIRECTOR LAND ADJUDICATION AND SETTLEMENT .. 2ND RESPONDENT

**DEMARCATON OFFICER AKIRANG’ONDU ‘A’ ADJUDICATION
SECITON 3RD RESPONDENT**

AND

CONSOLATA KABUTIA M’IMWETI INTERESTED PARTY

M’MUNJURI THIRAGNE INTERESTED PARTY

SILAS MURIUKI KARITHO INTERESTED PARTY

THIAURI M’MUKARIA INTERESTED PARTY

GEOFFREY MIRITI M’ITHANGATHA INTERESTED PARTY

JULIUS ‘M’IMPUI M’IMWETI INTERESTED PARTY

SILAS MUROUKI M’IMAINGI INTERESTED PARTY

HENRY KIBAARA M’IMWETI INTERESTED PARTY



DIOCESE OF MERU TRUSTEES REGISTERED (THRO' FATHER BENARD MUTHOMI)	INTERESTED PARTY
JOSEPH MUTUMA M'IMWETI	INTERESTED PARTY
IRUKI M'KAIRIAMA	INTERESTED PARTY
GEOFFREY MANYORE KOOME	INTERESTED PARTY
MBAABU M'MWERERIA	INTERESTED PARTY
MITHIKA MWENDA	INTERESTED PARTY
KIAMBA MUTUMA	INTERESTED PARTY
STEPHEN UNGU	INTERESTED PARTY
KINYUA KARIITHO	INTERESTED PARTY
TIMOTHY MPEKETHU	INTERESTED PARTY
JOYCE KANANU PAUL	INTERESTED PARTY
STANLEY NCURE	INTERESTED PARTY

RULING

1. The court is asked by the applicant through an application dated February 9, 2022 to once more re-admit the petition dated November 18, 2010 for hearing. The application is supported by an affidavit of Silas Kinyua M'Imweti sworn on February 9, 2022. The reasons are that the petitioners former lawyers withdrew the last minute when the suit was coming for hearing, the petitioner collected the file but by the time he appeared in the open court the court had already dealt with the file and that it was in the interest of justice to grant him another chance to prosecute his petition which is based on land his only source of livelihood.
2. The respondents did not file any responses but indicated they had left it to the court to decide the merits of the application. On behalf of the interested parties the 8th interested party opposed the application by a replying affidavit sworn on March 2, 2022. The grounds are that; the application was an abuse of the court process the applicant has been indolent and casual for the last 10 years; three advocates have been acting for him; it would be prejudicial to allow the application; non-attendance has not been sufficiently explained; the balance of rights of all parties must be done; some witnesses have since passed on; reinstatement would definitely impact on the administration of justice and that financial constraints have been heavy on them.
3. In a ruling dated May 20, 2020 this court set aside orders made on November 7, 2019 where after the petition was dismissed for non- attendance by both the petitioner and his advocates on the record.
4. The circumstances then were that whereas the petitioner was in court, his lawyers were not and when he was given time to look for them he failed to appear by 10.50 am prompting the court to dismiss the petition.
5. The court made an order that there would be no further adjournment of the matter. So the matter came up again on July 13, 2021 where Mr. Mutembei advocate failed to show up. The court gave another hearing date of November 8, 2021 but Mr. Mutembei advocate for the petitioner once more was absent.



6. Miss. Kiyuki for the interested party told the court the petitioner had been stood down for hearing.
7. She urged the court to dismiss the petition for non-attendance by both the petitioner and her counsel on record. The court placed the file aside.
8. Later on at 12.05 pm Miss Kiyuki told the court a hearing notice had not been served upon the petitioner. The court granted an adjournment and issued a notice to show cause for dismissal of the suit for February 3, 2022.
9. When the matter came up for hearing on February 3, 2022, both the petitioner and his advocates on record were absent prompting the respondents to seek for the dismissal. The court proceeded to dismiss the petition.
10. The petitioner now sets to setting aside the order dismissing his petition. He states he disagreed with his erstwhile advocates on record on the morning of the hearing, collected his file and showed up in court late.
11. A court of law has unfettered discretion to reinstate a suit dismissed for non-prosecution and non-attendance.
12. In *Patel v E A Cargo Handlings Services Ltd* (1974) E A 75 the court said the discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake but it was not designed to assist a person who had deliberately sought whether by evasion or otherwise to obstruct or delay the court of justice. The discretionary power is therefore to be exercised judicially and not in a selective, discriminatory, arbitrarily and idiosyncratic manner.
13. Against the above legal requirements, the petitioner submits he has given a reasonable explanation for non-attendance in court on February 3, 2022. What baffles this court and which has not been explained is if the petitioner after May 20, 2020 took seriously the conditions given by the court in reinstating his petition. There is no explanation given for non-appearance on October 13, 2021 and November 8, 2021. Whereas the court is aware the petitioner appeared in open court on February 3, 2022 later in the afternoon after his petition was prosecuted, I notice there has been inaction on his part. If indeed he had been forthright and diligent with his lawyers on record he would have known the suit was coming up on July 13, 2021 and later on November 18, 2021 on time so that there would have been prior knowledge or preparations one way or the other before November 8, 2021 and later on February 3, 2022.
14. The petitioner in my view has had more than enough chances to put his house in order and prosecute his petition. On the other hand the interested parties aver there has been indolence and inaction on the part of the petitioner.
15. Truly they are justified in holding such views under the circumstances. The court is also enjoined to consider and establish if despite the delay justice can still be done in the matter notwithstanding the inordinate delay. Other than financial stress, the interested parties have not explained how else they will be prejudiced if the court were to reinstate the petition. In my view the respondents can still be compensated by way of costs.
16. Given the foregoing, I allow the application with costs to the respondents and the interested parties.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 18TH DAY OF MAY, 2022

In presence of:



Miss Mwilaria for petitioner

Miss Kiyuki for interested parties

Kieti for 1st – 3rd respondents

HON. C.K. NZILI

ELC JUDGE

