



**Onchana v County Government of Kisii (Environment & Land Case
483 of 2016) [2025] KEELC 3203 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 483 OF 2016**

M SILA, J

APRIL 4, 2025

(FORMERLY KISII CMCC NO.164 OF 2010)

BETWEEN

SALOME MOKEIRA ONCHANA PLAINTIFF

AND

COUNTY GOVERNMENT OF KISII DEFENDANT

RULING

1. The application before me is that dated 19 November 2024 filed by the plaintiff. She seeks the following orders :
 - i. That the Honorable Judge be pleased to reinstate this matter which was dismissed on 20th March 2017 for want of prosecution.
 - ii. That upon granting prayer 1 above, the Honourable Judge be pleased to issue orders directing the Land Surveyor, Kisii County, to visit the suit land and file a report before the next mention date to resolve the boundary dispute.
 - iii. Costs of this suit be provided for.
2. The application is opposed.
3. To put matters into context, this suit was commenced vide a plaint filed on 19 April 2010 through the law firm of M/s Kerosi Ondieki & Co Advocates. The Plaint was filed in the Chief Magistrates' Court at Kisii but was ordered transferred to the High Court pursuant to an order issued on 1 July 2011 in Kisii High Court Miscellaneous Application No. 234 of 2010.
4. In the plaint, the applicant pleaded to be the registered proprietor of the land parcel Nyaribari Chache/ B/B/Boburia/4439 measuring approximately 0.9 ha. She pleaded that on 2nd April (presumably 2010),



- the defendant/respondent encroached into the suit land and threatened to evict the applicant. She pleaded that she suffered damage to her crops. In the suit, the applicant asked for orders to permanently restrain the respondent from interfering with the suit land.
5. Together with the plaint, the applicant filed an application for an interlocutory injunction to restrain the respondent from interfering with the suit land pending hearing and determination of the case. The application was opposed, the position of the respondent being that the applicant had erected structures on a road that was intended to be opened for use by the public, and that she had encroached into the road by a distance of 3 metres. She also filed defence denying the claims of the applicant. On 26 May 2010, a consent was recorded in court that the application and the entire suit be withdrawn with costs to the respondent. On 1 November 2010, an application dated 28 October 2010, was filed for review of the order of 26 May 2010 on the basis that the applicant did not give authority for the suit to be withdrawn. That application was filed through the law firm of M/s S.M Sagwe & Company Advocates. The application was allowed by consent on 1 December 2010.
 6. There followed an application dated 8 March 2011 seeking orders to stay the suit pending determination of High Court Miscellaneous Application No. 234 of 2010 that sought to transfer the case from the Magistrates' Court to the High Court. That application was dismissed on 24 May 2011 by Hon. Kimutai for non attendance. I have already mentioned that the High Court allowed the transfer of the suit on 1st July 2011.
 7. There is no record of the plaintiff moving the case from 24 May 2011 when her application dated 8 March 2011 was dismissed. On 31 January 2017, the court on its own motion issued a notice for the applicant to show cause why her case should not be dismissed for want of prosecution. The notice came up for hearing on 20 March 2017. There was no appearance on the part of both plaintiff and defendant and the suit was duly dismissed.
 8. Nothing transpired in the suit until an application dated 19 June 2024 was filed by the applicant in person seeking for reinstatement of the case. I had to strike out the application for being filed in person without there being a notice to act in person in place of the advocate on record.
 9. Subsequently the applicant regularized her representation and filed the present application. It will be seen that it is an application seeking reinstatement of the dismissed suit and also for an order of survey.
 10. The application is based on the grounds that there was a mistake on the part of her advocate who failed to inform her to attend court and that there is necessity for the Land Surveyor to visit the ground. It is more or less the same thing that she has deposed in her supporting affidavit.
 11. The defendant has opposed the application through a replying affidavit sworn by Bonareri Elvine, an advocate practising in the office of the County Attorney of the defendant. She has pointed out that the applicant never prosecuted her case thus leading to its dismissal. She has stated that the applicant had a duty to follow up on her case periodically and the fact that it was dismissed means that she never followed up. She has added that equity aids the vigilant and not the indolent.
 12. I have taken note of the above and also the submissions made in writing by both the applicant and respondent. Ms. Bonareri also made brief submissions to highlight at the inter partes hearing of the application.
 13. I have already outlined the history of the case. Before its dismissal on 20 March 2017, it was last in court on 24 May 2011, which was about 6 years back. From the time of dismissal to the time that the applicant first made an attempt to reinstate the case through the application dated 19 June 2024 was a period of close to 7 years. Thus, we can say that for a period of about 13 years, the applicant never bothered with the case. That delay to me is inordinate. Neither has the applicant explained why for



13 years she never followed up on the case. What she has said is that her advocate failed to inform her of the hearing date. That may be so, but no reason has been given why for 13 years no attempt to list the case for any direction was ever made. There is therefore no explanation for the 13 years delay. And assuming that the advocate failed to inform the applicant of the date, the applicant has also not stated why it took her close to 7 years to find out that the suit had been dismissed.

14. In those circumstances, I am not moved to set aside the order that dismissed the case for want of prosecution.
15. The other order sought is for a surveyor to be sent to the ground. Now that I have not been persuaded to reinstate the case, this order cannot be granted within this case. Either way, I see no prejudice to the applicant. Nothing stops her from independently approaching the County Surveyor's office for determination of her boundary. You certainly do not need a court order to lodge a boundary dispute with the Land Registrar and County Surveyor.
16. For the above reasons, I see no merit in this application and it is hereby dismissed with costs. In essence this case remains dismissed and the file be closed.
17. Orders accordingly.

DATED AND DELIVERED THIS 4TH DAY OF APRIL 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Plaintiff/applicant – Acting in person

Ms. Githinji for the defendant/respondent

Court Assistant – Michael Oyuko

