



**Maundu & 2 others v Muthoka (Environment & Land Case  
4 of 2020) [2025] KEELC 3036 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3036 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE 4 OF 2020**

**EO OBAGA, J**

**APRIL 3, 2025**

**BETWEEN**

**BENJAMIN MAUNDU ..... 1<sup>ST</sup> PLAINTIFF**

**PETER MBUNGI NDETO ..... 2<sup>ND</sup> PLAINTIFF**

**GIDEON MWENDWA NDUNGI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KING'OO MUTHOKA ..... DEFENDANT**

**RULING**

1. The Defendant/Applicant filed a Notice of Motion dated 3<sup>rd</sup> February, 2025 in which he sought dismissal of this suit for want of prosecution. The Applicant contends that it has been over a year since the suit was filed yet the Plaintiffs/Respondent have not been keen to prosecute their suit. The Applicant avers that the Respondents have lost interest in the suit and that in any case the suit is misconceived the matter having been settled through the process provided under the [Land Adjudication Act](#).
2. The Respondents opposed the Applicant's application through a sworn affidavit sworn on 19<sup>th</sup> March, 2025. The Respondents state that they are keen on prosecuting their case. They state that their case was filed through an advocate on 22<sup>nd</sup> January, 2020. The proceedings went slow due to the corona pandemic. The 1<sup>st</sup> Respondent deponed that after corona, he became unwell for some time and was unable to give his counsel instructions.
3. On 20<sup>th</sup> March, 2023, the court allowed their advocate to cease actin for them. From then, they never received any mention notices until they were served with the application for dismissal. They state that they have decided as a family to prosecute this case.



4. The application was argued orally. The Applicant submitted that the Respondents have not been keen to prosecute their case. They were only awoken from slumber upon filing of the application for dismissal.
5. On their part the Respondents submitted that when their advocate was allowed to cease acting further, they were never served with any notices and that they are now keen to proceed with the case.
6. 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 the Respondents have shown sufficient reason why the suit should not be dismissed.
7. This suit was filed by way of originating summons on 23<sup>rd</sup> January, 2020. The Respondents sought to have the court declare that they had acquired the portion they occupy under adverse possession. This suit was filed after the Respondents' appeal to the Minister under the *Land Adjudication Act* was dismissed. The Respondents had been given a portion of land but were not satisfied hence the appeal to the Minister.
8. The record shows that on 20<sup>th</sup> March, 2023, the Respondents' advocate was allowed to cease acting for them. The counsel for the Applicant appeared before court on 23<sup>rd</sup> October, 2023 when the matter was referred to the Deputy Registrar for pretrial. Thereafter, neither the Applicant nor the Respondents appeared in court or took any step towards prosecution of the case until the application for dismissal was filed.
9. Though the deponent of the affidavit in opposition to the application for dismissal said that he was unwell for some time, there was no evidence shown that he was sick. There was also no reason given why his other co-Respondents could not instruct the advocate to proceed with the case. For five years, the Respondents never showed any intention to progress their case towards having it heard.
10. The Respondents cannot be heard to say that they are now keen to have the suit heard. From the brief background given hereinabove, the Respondents underwent all the processes provided for under the *Land Adjudication Act*. No further proceedings were filed to this court pursuant to the dismissal of the appeal to the Minister. The Respondents having failed to demonstrate that they had a valid reason for not prosecuting their suit and given the history of this litigation, I find that the Applicant's application has merits. I allow the same with the result that the Respondents' suit is hereby dismissed with costs to the Applicant.

It is so ordered.

.....

**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF APRIL, 2025.**

**IN THE PRESENCE OF:**

Mr. Mbata for Defendant

Ms. Kioko for Plaintiff/Respondent

Court assistant - Steve Musyoki

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