



**Ayako & 2 others v Otieno & another (Environment & Land Case  
10 of 2013) [2022] KEELC 15198 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 10 OF 2013  
EO OBAGA, J  
NOVEMBER 24, 2022**

**BETWEEN**

**HLDA AYAKO ..... 1<sup>ST</sup> APPLICANT  
DISTRICT LAND REGISTRAR ..... 2<sup>ND</sup> APPLICANT  
UASIN GISHU COUNTY ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MICHAEL OMONDI OTIENO ..... 1<sup>ST</sup> RESPONDENT  
ERICK ONYANGO ORWA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of Notice of Motion dated July 27, 2022 in which the 1<sup>st</sup> Defendant/Applicant seeks to have the ex parte proceedings of July 26, 2022 set aside and the hearing to start afresh.
2. On the July 26, 2022, this case came up for hearing. The court mentioned the matter virtually and allocated it for hearing virtually at 10.00a.m. at 10. 000a.m the court called out the matter and counsel for the applicant requested the court to put aside the matter as she was having another hearing. The matter was placed aside.
3. The matter was called out at 10. 50a.m but this time, the counsel for the Applicant did not log in and there was no explanation as to her whereabouts. The hearing therefore proceeded ex-parte and the Plaintiffs closed their case and the case was fixed for defence hearing on November 7, 2022.
4. The applicants counsel now claims that the applicant was physically present in open court and that she later on joined her only to find the court room empty. The counsel went to the Registry where the court assistant informed her that the case had gone on and was set for defence hearing on November 7, 2022.



5. The applicant's counsel states that she went before the children's court where she had a hearing and that when she came back, she found hearing had proceeded *ex-parte*.
6. The plaintiffs/respondents opposed the applicant's application based on two replying affidavits sworn by the counsel for the respondents and the 1<sup>st</sup> respondent. The affidavits recite the events of that day and state that there was no reason why the applicant and her counsel came to open court when the directions were clear that the hearing was to proceed virtually. The Respondents contend that the applicant is out to delay the finalization of this suit which was filed 16 years ago.
7. I have carefully considered the applicant's application as well as the opposition to the same by the respondents. I have also considered the oral submissions during the hearing of the Applicant's application. The only issue for determination is whether the applicant has demonstrated grounds which will warrant this court to set aside the *ex-parte* proceedings of July 26, 2022.
8. As has been stated herein, the court allocated the hearing at 10.00a.m. The hearing was to be virtual in compliance with the directions of the Chief Justice as reiterated in her internal memo of July 12, 2022. At 10. 00a.m, counsel for the applicant asked the court to place aside the file as she was addressing another court. The court graciously allowed her request.
9. The applicant's counsel never logged in thereafter. At 10.50a.m, this haring proceeded virtually. The case was fixed for defence hearing on November 7, 2022. There was no need or counsel for the applicant or her client to come to court when hearing had been set to proceed virtually. The applicant's counsel would have heard courtesy of asking a colleague to log in and inform the court of her predicament.
10. This is a case which was field on February 22, 2006. This is the 17<sup>th</sup> year yet it is yet to be concluded. There is absolutely no good reason shown why the applicant's counsel could not proceed. The applicant's counsel lost the opportunity to cross-examine. The court was gracious enough to fix down the suit for defence hearing. I therefore find no merit in the applicant's application which is dismissed with costs to the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Ms. Oduor for 1<sup>st</sup> Defendant

Ms. Odwa for Plaintiff.

Court Assistant –Albert

**E. O. OBAGA**

**JUDGE**

**24<sup>TH</sup> NOVEMBER, 2022.**

