



**Tande (Suing as the Legal Representative to the Estate of Manasseh Lemaiyan Tande (Deceased) who was Suing as the Legal Representative to the Estate of Geoffrey Kayaku Tande - Deceased) v Kamau & another (Environment & Land Case E005 of 2020) [2025] KEELC 4214 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4214 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E005 OF 2020**

**MD MWANGI, J  
MAY 29, 2025**

**BETWEEN**

**LOUIS SAIMI TANDE (SUING AS THE LEGAL REPRESENTATIVE TO THE ESTATE OF MANASSEH LEMAIYAN TANDE (DECEASED) WHO WAS SUING AS THE LEGAL REPRESENTATIVE TO THE ESTATE OF GEOFFREY KAYAKU TANDE - DECEASED) ..... PLAINTIFF**

**AND**

**FAITH WANJUHI KAMAU ..... 1<sup>ST</sup> DEFENDANT  
JOHN NJOROGE NGUGI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(In respect of the notice of motion dated 16<sup>th</sup> April 2025 seeking to set aside the proceedings of 3<sup>rd</sup> April 2025 and that the matter starts *de novo*)

**Background**

1. The notice of motion dated 16<sup>th</sup> April 2025 is by the Defendants/Applicants who pray that the court sets aside the proceedings of 3<sup>rd</sup> April 2025 and that this case be heard *de novo*.
2. This matter proceeded to hearing on 3<sup>rd</sup> April 2025 in the absence of the Defendants. This was upon the court confirming service upon the Defendants in accordance with the affidavit of service filed by the Plaintiff. The Plaintiff testified and closed her case on the same day. Judgment was scheduled for 5<sup>th</sup> June 2025.
3. The Defendants filed this application under certificate of urgency thirteen (13) days after the hearing. The application is supported by the affidavit of Wincate Muthoni Mwangi, the advocate for the



Defendants who deposes that though she was duly served, she inadvertently failed to diarize the date hence the failure by herself and her clients to attend court on the hearing date. She concedes to the error on her part and urges the court not to visit it on her clients.

4. The Plaintiff/Respondent vehemently opposed the application vide the fifty six (56) paragraphs' affidavit of Isaac O. Miencha sworn on 5<sup>th</sup> May 2025.

#### **Oral Submissions.**

5. The application was heard by way of oral submissions when the parties presented their respective arguments before the court which I have carefully considered in writing this ruling.

#### **Issues for Determination**

6. The sole issue for determination in the court's considered opinion is whether the application by the Defendants/Applicants is merited to justify the exercise of the court's discretion in their favour.

#### **Analysis and Determination.**

7. From the submissions of the parties, and the law applicable on setting aside ex parte orders, the court has an unfettered discretion to set aside such orders or proceedings for that matter.

8. Borrowing from the wise words of the Court of Appeal in the case of *Bouchard International (Services) Limited v M'Mwereria* (1987) (KLR 193),

“A judge has to judge the matter in light of all the facts and circumstances both prior and subsequent and of the respective merits...”

9. The advocate for the Defendants/Applicants admits that she made a mistake in not diarizing the hearing date served for the hearing of the matter. She pleads that this should not be visited on her clients.

10. Human fallibility and the frailties of human nature are realities that we live with. The law indeed acknowledges them. That informs the philosophy behind review, setting aside of default judgments and ex parte orders as well as appeals. In the case of *Philip Chemweno and another v Augustine Kubende* (1982 -88) KR 103, the court rightly stated that,

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merits...the court as is often said exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline”.

11. Again in the case of *Bellinda Murai & 9 others v Amos Wainaina* (1979) eKLR, the court was emphatic that,

“The door of justice should not be closed because a mistake has been made by a person of experience who should have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate”.

12. In this matter, considering the circumstances of the case, the nature of the dispute and cognizant of the fact that the application was made without inordinate delay, I consider it just and appropriate to allow the application to set aside the proceedings of 3<sup>rd</sup> April 2025 which I hereby do and direct that the case



starts de novo. The Defendants will however pay thrown away costs of Kshs. 30,000/- to the Plaintiff in the next 14 days to cater for the Plaintiff's advocates' court attendance costs and the witness expenses.

13. Consequently, the date of 12<sup>th</sup> June 2025 set for the delivery of the judgment is hereby vacated.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Omas h/b for Ms. Mwangi for the Defendants/Applicants

Mr. Kipkirui for the Plaintiff/Respondent

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

