



**Kioko v Charo (Environment & Land Case 27 of 2014)
[2025] KEELC 4052 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4052 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 27 OF 2014
FM NJOROGE, J
MAY 27, 2025**

BETWEEN

REUBEN MULWA KIOKO PLAINTIFF

AND

JAPHET NOTI CHARO DEFENDANT

RULING

1. The Notice of Motion Application dated 10/3/2024 has been brought under Section 1A, 1B & 3A of the [Civil Procedure Act](#), Order 45 Rules 1 & 2 of the [Civil Procedure Rules](#). The Defendant/Applicant prays for the following orders:
 - a. That this application be certified as urgent and service thereon be dispensed with in the first instance;
 - b. That there be a temporary stay of execution of the directions herein as to filing of submissions pending the hearing and determination of this application inter partes;
 - c. That the orders made on the 27th day of February, 2025 closing the Defence case be set aside and /or varies;
 - d. That costs to this application be provided for.
2. The application is based on the following grounds:
 1. That this matter came up for Defence hearing on the 27th day of February, 2025;
 2. That the Defendant who was indisposed was unable to attend court and thus an application for adjournment was made on behalf of the Defendant;
 3. That at the time of making such application for adjournment, the Defendant's counsel did not have any medical proof of the said sickness;



4. That by the time the medical certificate was availed in court, the court had already made its Orders closing the Defence Case;
 5. That the Defendant's failure to attend court on the 27th day of February, 2025 was not deliberate but due to reasons beyond his making.
 6. That the Defendant has got a good defence and would wish to be heard on his said Defence;
 7. That the orders sought herein above do not prejudice any party in any manner whatsoever;
 8. That failure to accord the Defendant with a chance to defend his case might lead to losing a valuable property while unheard due to an excusable reason;
 9. That it would be fair, just and reasonable that the Defendant is accorded with a chance to defend his case.
3. The application is opposed. There is an affidavit filed in response sworn by the plaintiff, dated 21/3/2025. I have read that affidavit. It dwells mainly on the history of the matter and the delay that the plaintiff has allegedly suffered at the hands of the defendant in this litigation. It also faults the medical report of the defendant as an afterthought and an attempt to salvage the defendant's case and also delay the matter further. The plaintiff pleads in that affidavit that the court ought to uphold the overriding objective and targets expeditious and timely disposal of matters in doing so.
4. Much as this court sympathizes with the plaintiff over the delay occasioned by this application and the events that led to its filing, this court can not wish away the fact that Mr. Otara appeared before it on 27/2/2025 and passionately beseeched it to allow the defendant to avail evidence of indisposition on 27/2/2025 when he appeared in court on his behalf. Mr Otara on that day stated that his client's application was a first application for adjournment and that he had only been informed at 7.00 am that morning of the defendant's indisposition hence the inability to obtain evidence to support his application for adjournment. This court rejected the application for adjournment and ordered him to proceed or close the defence case whereupon he prayed successfully for the file to be placed aside. Later on at 10:30 am Mr Otara was of the opinion that his client's medical documents had arrived and were in the possession of the court assistant but that turned out not to be the case and he emphasized that the defendant could not testify as he was under medication. Mr Kilonzo was then in open court and he expressed the opinion that the defendant appears to be an untruthful person. Mr Otara was of the view, and he made an oral application that, the order that he close his client's case be reviewed. The court did not address that application but it ordered that the defendant's case be marked as closed and parties do file submissions and gave 8/4/2025 as the mention date for issuance of a judgment date.
5. The present Motion was lodged on 10/3/2025 or thereabouts which I do not consider inordinate delay. By its prompt filing this court is persuaded that the applicant desires to be heard and that he ought to be accorded a second chance. I have also considered the letter that was addressed to the Deputy Registrar of the court, and the medical evidence attached thereto which have been produced by way of exhibition in the supporting affidavit, and I am persuaded that the defendant was indeed ill and deserves to be allowed to have his case proceed and evidence for the defence adduced.
6. Consequently, this court allows the defendant's application dated 10/3/2025 in terms of prayers no 3 and 4. The matter shall be mentioned on 23/9/2025 for fixing of a hearing date. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27TH DAY OF MAY 2025.



MWANGI NJOROGE
JUDGE, ELC MALINDI.

