



**Ongera v Moseti & another (Environment & Land Case  
452 of 2014) [2025] KEELC 3142 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3142 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 452 OF 2014**

**M SILA, J**

**APRIL 1, 2025**

**BETWEEN**

**REBECCA MOTABORI ONGERA ..... PLAINTIFF**

**AND**

**ALOYS MOSETI ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY LAND REGISTRAR, KISII COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application before me is that dated 26 February 2024 seeking orders to reinstate this suit which was dismissed on 26 February 2024 for non-attendance on the part of the plaintiff and her counsel. The application is filed by the law firm of M/s C.A Okenye & Company Advocates who have come on record for the plaintiff/applicant in place of the law firm of M/s Zablon Mokua & Company Advocates. The application is founded on grounds inter alia that the hearing notice was served upon the applicant's erstwhile advocates but their clerk inadvertently failed to diarise the same. It is averred that it was on 22 September 2024 when the applicant came to know that the suit was dismissed when she was told by a relative who heard that the suit had been dismissed.
2. The application is supported by the affidavit of the applicant. She has more or less reiterated the above and urged that her case raises triable issues with a high probability of success. She has also annexed an affidavit sworn by one Esborn Onsongo, who has deposed that he is a court clerk working in the law firm of M/s Zablon Mokua & Company Advocates. He has deposed that the firm was served with a hearing notice on 23 November 2023 for hearing of the suit on 26 February 2024 but due to inadvertence he failed to diarize the matter. He regrets what happened.
3. The application is opposed by the 1<sup>st</sup> defendant who filed Grounds of Opposition. It is urged that the application is unmerited as it is being filed close to a year after the suit was dismissed and therefore the applicant is guilty of inordinate delay. It is averred that the 1<sup>st</sup> defendant will be prejudiced as he will be



kept under an unending apprehension of a pending case. It is also contended that the applicant's suit does not disclose a reasonable cause of action in view of the County Land Registrar's and Surveyor's report dated 8 November 2013.

4. I directed counsel to file submissions on the application and I have taken note of the submissions filed by both counsel for the applicant and 1<sup>st</sup> defendant. Partly in his submissions, counsel for the 1<sup>st</sup> defendant has pointed out that the applicant has been absent on numerous occasions that the matter has been in court for mention and yet again during the hearing date the applicant and her counsel were absent.
5. It is certainly true that on many occasions the applicant and her counsel have been absent from court. Indeed when I dismissed the matter for non-attendance on 26 February 2024, I made the note that it would appear that the applicant has lost interest in the matter as the record showed that she had persistently been absent. I am thus not too persuaded that this was a case of inadvertent failure to diarize the matter. Were the other failures to appear in court also due to failure to misdiarize the case ? That has not been explained.
6. I am however alive to the fact that this is a land matter, and out of the court's own grace and discretion, so that all parties are given a final chance of being heard, and not because of the reasons given by the applicant, I will reinstate the case of the applicant. This however will be subject to the applicant paying thrown away costs of Kshs. 20,000/= to the 1<sup>st</sup> defendant/respondent within 14 days hereof. In default of paying the said thrown away costs, the suit will remain dismissed.
7. Orders accordingly.

**DATED AND DELIVERED THIS 1<sup>ST</sup> DAY OF APRIL 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mrs. Bosire for the 1<sup>st</sup> defendant/respondent

N/A on part of Mr. Okenye for the plaintiff/applicant

Court Assistant – Michael Oyuko

