



**King'ola v Maweu & 5 others (Environment & Land Case  
297 of 2017) [2025] KEELC 3524 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3524 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE 297 OF 2017**

**EO OBAGA, J**

**MAY 5, 2025**

**BETWEEN**

**GEORGE SILA KING'OLA ..... PLAINTIFF**

**AND**

**JOSEPH MAKENGA MAWEU ..... 1<sup>ST</sup> DEFENDANT**

**MBULI MWEU TETA ..... 2<sup>ND</sup> DEFENDANT**

**MUIA MUTAVA ..... 3<sup>RD</sup> DEFENDANT**

**GRACE NDUKU MUATHA ..... 4<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER MAKUENI  
COUNTY ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. The PlaintiffApplicant filed a notice of motion dated 13<sup>th</sup> October, 2023 in which he sought the following orders:
  - a. Spent
  - b. Spent
  - c. The Bill of costs taxed exparte be set aside and the Bill of cost be taxed afresh.
  - d. Costs of the application be to the Decree Holder.
2. The Applicant had filed this suit in Milimani in person in the year 2013 being ELC No. 818 of 2013. On 25<sup>th</sup> November, 2014, the suit was transferred to Machakos ELC where it became ELC No. 2 of



2015. When Makueni ELC was established, the suit was transferred to Makueni ELC where it became ELC 297 OF 2017.
3. While the suit was pending before Milimani ELC, the Applicant engaged the services of a lawyer. On 10<sup>th</sup> February, 2020, the Plaintiff withdrew this suit with costs to the Defendants. On 23<sup>rd</sup> September, 2022, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their Bill of costs. On 7<sup>th</sup> October, 2022 the bill of costs was served upon the Applicant's advocate and the advocate for the 4<sup>th</sup> Defendant.
  4. On 24<sup>th</sup> October, 2022 the bill of costs was taxed exparte. A notice to show cause was issued which was duly served upon the Applicant who took it to his lawyers but there was no attendance in court during the notice to show cause. Warrants of arrest were issued against the Applicant on 5<sup>th</sup> October, 2023. The matter was set down for mention on 14<sup>th</sup> November, 2023.
  5. The matter came up for mention on 14<sup>th</sup> November, 2023 but parties were not present. The court fixed the matter for mention on 22<sup>nd</sup> February, 2024. The Applicant had filed the present application but not under certificate of urgency. A certificate of urgency was filed on 17<sup>th</sup> November, 2023 in respect of the application under consideration. The parties were absent when the certificate was placed before the Judge on 21<sup>st</sup> November, 2023. However despite this, the judge fixed the present application for hearing on 25<sup>th</sup> January, 2025.
  6. On 25<sup>th</sup> January, 2024 the court gave directions on disposal of the present application. The Judge further stated the Notice to show cause which had been slated for hearing on 22<sup>nd</sup> February, 2024 had been stayed pending hearing and determination of this application.
  7. The Applicant contends that he was not served with the bill of costs and that he only became aware of it when he was served with notice to show cause. He proceeded to his lawyer's office where he was informed that they were indeed served with the bill of costs via email but the email was misplaced in his lawyer's office and could not therefore be entered in the diary by the clerk responsible.
  8. The Applicant further contends that the bill as taxed was too high and that the same should be set aside to give him a chance to participate in the taxation. He states that he should not suffer for mistakes of his lawyer.
  9. The Applicant's application was opposed through a replying affidavit sworn on 1<sup>st</sup> February, 2024 by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants Respondents' advocate. The advocate states that he is unable to understand the two affidavits sworn by the Applicant and his lawyer and that the application is premised on provisions of law which are nonexistent in our laws.
  10. The advocate states that the bill was not served upon the Applicant as he had a lawyer on record. The advocate further states that the Applicant does not explain why inspite of conceding to service, he did not attend court for the notice to show cause.
  11. It is further deponed that the Applicant concedes service, her advocate goes ahead to speak for him that he did not attend court as he was unwell. The advocate takes issue with the filing of this application before the Environment and Land Court when what is being sought to be set aside was a taxation by the taxing officer who could have been better placed to know the reason for non-attendance during the taxation.
  12. The advocate wonders why the application was filed on 13<sup>th</sup> October, 2023 when the Applicant states that he visited the advocate's office on 4<sup>th</sup> October, 2023.
  13. Despite directions on filing of written submissions which were given on 25<sup>th</sup> January, 2024, it is only the Applicant who filed submissions dated 10<sup>th</sup> March, 2025. The Applicant had been given an extension



of 7 days to file his submissions with effect from 13<sup>th</sup> February, 2025. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were given 14 days to file their submissions with effect from 13<sup>th</sup> February, 2025. Ruling was supposed to be delivered on 24<sup>th</sup> April, 2025 but was deferred to 5<sup>th</sup> May, 2025 due to my bereavement.

14. The Applicant submits that natural justice demands that parties ought to be given time to be heard and that a litigant should not be driven from the seat of justice. The Applicant relied on the case of Martha Wangari Karua –vs- IEBC Nyeri Civil Appeal No. 1 of 2017 where the Court of Appeal held as follows:

“The Rules of Natural Justice require that the court must not necessarily drive any litigant from the seat of justice without a hearing, however weak his or her case may be.”

15. The Applicant further relied on the case of P. M. M. –Vs- J. N. W. Nairobi HC Misc Application No. 182020 (2020) eKLR where Justice L. Ochode (as she then was) held as follows:

“.....Either that the Respondent was not properly served with summons or that the Respondent failed to appear in court at the hearing due to sufficient cause.....”

16. Further reliance was placed on the case of Ham –vs- SOS (2021) eKLR where M. Thande J held as follows:

“As stated earlier, the failure to attend court on 25<sup>th</sup> February, 2021 is purely a mistake of the Applicant’s counsel. My view is that the mistake on the part of counsel in the circumstances, is excusable and the door of justice ought not to be closed to the Applicant. The mistake of counsel should not be visited upon the Applicant. Further, courts must dispense substantive justice in line with the constitutional imperative in Article 159 of *the Constitution of Kenya, 2010* that justice shall be administered without undue regard to procedural technicalities. In the interest of substantive justice therefore, the dismissed application should be heard and determined on merit.”

17. I have carefully considered the Applicant’s application, the opposition thereto by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. I have also considered the submissions by the Applicant. The only issue for determination is whether the Applicant has demonstrated that there was sufficient cause which prevented him from coming to court.

18. I have taken the pain to demonstrate that the Applicant does not deserve the discretion of this court. The Applicant’s advocates were served but they did not attend court during the taxation. The reason given is that the taxation notice and the bill of costs were misplaced in their office. The service was via email and emails remain in the system for long unless deleted.

19. The Applicant himself was served with Notice to Show Cause but he never bothered to attend court. It was claimed that his nonattendance before court was because he was unwell. How could he attend his lawyer’s office but fail to attend court. Why didn’t his lawyers attend the hearing of Notice to Show Cause if the client was unable to due to his illness.

20. An application to set aside the warrant of arrest was made on 13<sup>th</sup> October, 2023 not under certificate of urgency. The certificate of urgency was prepared over a month later and when it was placed before the Judge, there was no one to prosecute the application despite the court serving the Applicant’s advocate. When finally the court gave directions on disposal of the application by way of written submissions, the Applicant took over a year to file submissions. This happened because he was enjoying stay of execution of warrants granted on 25<sup>th</sup> January, 2024. This is not conduct of a litigant who is keen on concluding a



matter. The court cannot exercise its discretion in favour of a litigant who is out to obstruct the course of justice. I therefore proceed to dismiss the Applicant's application with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

It is so ordered.

**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 5<sup>TH</sup> DAY OF MAY, 2025.**

