



REPUBLIC OF KENYA



KENYA LAW
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**Musau v Musau & another (Environment & Land Case
97 of 2018) [2025] KEELC 3602 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3602 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 97 OF 2018**

EO OBAGA, J

MAY 8, 2025

BETWEEN

CHRISTOPHER MUSYOKA MUSAU PLAINTIFF

AND

BENEDICTER NDUNGE MUSAU 1ST DEFENDANT

ELIZABETH KAMENE NDOLO 2ND DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 5th October, 2023 in which the Plaintiff/Applicant seeks the following orders:
 1. Spent
 2. THAT this honourable court be pleased to grant leave the firm of Ms. Evans Muli & Company advocates to come on record for the Plaintiff/Applicant in place of Mulandi Kisabit & Associates Advocates.
 3. Spent
 4. THAT the honourable court be pleased to set aside the orders given on 13th March, 2023 dismissing the Plaintiff's suit for want of prosecution.
 5. THAT the honourable court be pleased to reinstate the Plaintiff's case for hearing and disposal on merits.
 6. THAT upon grant of prayers hereinabove, the honourable court be pleased to reissue fresh summons to Enter Appearance for a period of 12 months from the date of the order.
 7. THAT the costs of this application be provided for.



2. The Applicant had on 4th October, 2018 filed a suit against the Defendants/Respondents in which he sought the following reliefs:
 - a. An order of permanent injunction to restraining the Defendants and/or any other parties, officers, agents and/or employees acting under them from entering, interfering with, developing, taking possession and/or in any other manner dealing with the property sold to the Plaintiff.
 - b. An order of specific performance compelling the 1st Defendant to give vacant possession of the suit property to the Plaintiff.
 - c. An order of specific performance compelling the 1st and 2nd Defendants to complete the pending works of registration of the mutations of the suit land and transfer title to the Plaintiff.
 - d. General damages
 - e. Costs of the suit and interest on all awards.
 - f. Any other/further relief that the honourable court may deem fit to grant.
3. Summons to enter appearance were collected from the court on 12th October, 2018 but were never served upon the Respondents. On 3rd February, 2022, the court issued a Notice to Show Cause why the suit should not be dismissed for want of prosecution. The Notice to Show Cause was duly served upon the Applicant's lawyers m/s Mulandi Kisabit & Associates but they did not attend court on 17th February, 2022 and the Applicant's suit was dismissed for want of prosecution.
4. The application dated 5th October, 2023 was set down for hearing on 15th February, 2024 but there was no one to prosecute it. The same was dismissed for want of prosecution on that day that is 15th February, 2024. The Applicant filed a Notice of Motion dated 3rd April, 2024 seeking to have the orders dismissing the application set aside. In a ruling delivered on 8th November, 2024, the court set aside the orders of 15th February, 2024 which paved way for hearing of the present application.
5. The Applicant contends that he had given instructions to his erstwhile lawyer to pursue the case against the Respondents. Sometime in the month of August, 2023 while he was driving along Mombasa Road, he noticed that there were developments going on on the suit property. He then instructed his present advocates to go and peruse the court file. It is upon perusal of the court file that his present counsel noticed that the suit had been dismissed on 13th March, 2023.
6. The Applicant states that he was not aware of the dismissal until 2nd October, 2023 when his current advocates discovered the dismissal. He avers that the dismissal notice was not brought to his attention. He states that as he has appointed another firm of advocates, the dismissal order should be set aside so that he can pursue the matter to conclusion.
7. The application was argued orally on 30th January, 2025. I have considered the Applicant's application which was not opposed. The only issue for determination is whether this court should exercise its discretion in favour of the Applicant and whether summons to enter appearance should be re-issued.
8. To begin with the Applicant is seeking to have the orders of 13th March, 2023 dismissing his suit set aside. There were no orders given on 13th March, 2023 dismissing the Applicant's suit. The dismissal orders were given on 17th March, 2022. Even if the court were to assume that the date of 13th March, 2023 was a typing error, the Applicant does not deserve the discretion of this court in setting aside the orders of 17th March, 2022.



9. The summons to enter appearance were picked from court on 12th October, 2018. The same were never served. For almost four years, summons were not served until the suit was dismissed on 17th March, 2022. The application for reinstatement was made almost 1 year and 8 months later. This application was not prosecuted and was dismissed four months later on 15th February, 2024. The application to reinstate the dismissed application was made on 3rd April, 2024.
10. A case belongs to a litigant not his advocate. The Applicant has not given any reason as to why he never followed up his case where he had purchased over 20 hectares of the suit property. There is absolutely no reason given why summons to enter appearance which were ready and were picked on 12th October, 2018 were never served upon the Respondents.
11. The Applicant was clearly not interested in the suit. This is clear even from the manner in which he seems not to know when the dismissal orders were made. A court cannot give orders in vain. It cannot amend pleadings for parties. Even at the stage of arguing the application, the Applicant's lawyers were referring to non-existent orders given on 13th March, 2023. The court is aware that the 2nd Respondent has since passed on. Summons cannot be issued against a deceased person.
12. The sale agreement was made between the Applicant and Lee Ngui Musau and the 1st Respondent. The suit property was registered in the name of the 2nd Respondent who is now deceased. In the circumstances, I find that the Applicant's application is devoid of merit. The same is dismissed with no order as to costs.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF MAY, 2025.

In The Presence Of:

Mr. Kilonzo for Mr. Mutiso for Plaintiff.

Court Assistant – Steve Musyoki.

