



**Maranga v Mabiria & 6 others (Environment & Land Case
12 of 2015) [2025] KEELC 3689 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 12 OF 2015**

**M SILA, J
MAY 6, 2025**

BETWEEN

SAMWEL OMWERI MARANGA PLAINTIFF

AND

MATOKE MABIRIA 1ST DEFENDANT

MANUEL KIEMA MABIRIA 2ND DEFENDANT

MOMANYI MATOKE 3RD DEFENDANT

OMBUI MATOKE 4TH DEFENDANT

DANIEL KIEMA 5TH DEFENDANT

JACOB KIEMA 6TH DEFENDANT

MOSIOMA OMURWA 7TH DEFENDANT

RULING

1. The application before me is that dated 10 December 2024 filed by the plaintiff. He seeks to set aside orders made on 16 May 2024 which orders dismissed his application dated 6 February 2024 for non-attendance. He also seeks a reinstatement of his application dated 9 October 2023 which was yet again dismissed for non-attendance on 11 December 2023.
2. To put matters into perspective, the applicant commenced this suit through a plaint filed on 19 January 2015. He contended to be the owner of the land parcels Central Kitutu/Mwabundusi/2090 and 2091 (the suit properties). He claimed to have purchased the suit properties from one Samwel Mose Mabiria (deceased) and the 2nd defendant/respondent in 1989/1990. He claimed that on 27 December 2014 the respondents chased away his workers from the suit properties. In the plaint, he wanted the respondents permanently restrained from the suit properties. Together with the plaint, the applicant



filed an application dated 16 February 2015 seeking orders of injunction to restrain the respondents from the suit properties pending hearing of the suit. The respondents replied to that application inter alia asserting that the purported titles of the applicant were forgeries. They contended that the said titles are said to have emanated from subdivision of the land parcel Central Kitutu/Mwabundusi/175 and issued on 3 April 2013, yet the said land parcel Central Kitutu/Mwabundusi/175 had been subdivided in the year 2010 to bring forth the land parcels Central Kitutu/Mwabundusi/1591 and 1592. That application for injunction was heard by Okong'o J, and ruling thereof delivered on 8 April 2016 in presence of both counsel for the applicant and counsel for the respondents. The application for injunction was dismissed.

3. After dismissal of that application for injunction, the applicant took no step to prosecute the matter. Through a notice dated 14 August 2018, the court issued a notice for the applicant to show cause why the suit should not be dismissed for want of prosecution. The notice was listed for hearing on 13 November 2018 and the same was duly served. On 13 November 2018, only counsel for the respondents appeared in court with the applicant's counsel being absent. The court proceeded to dismiss the suit for want of prosecution.
4. Five years later, on 12 October 2023, an application dated 9 October 2023 was filed by the applicant seeking to set aside the order of dismissal of the suit made on 13 November 2018. He claimed that this suit was stayed pending hearing of Kisii Criminal Case No. 148 of 2015 where he had been charged. He stated that the criminal case was heard and he was acquitted. The application dated 9 October 2023 was listed for hearing on 11 December 2023 and counsel were duly served with the hearing notice by the court. On that day, only counsel for the respondents appeared. I proceeded to dismiss that application for non-attendance and failure to prosecute.
5. There followed an application dated 6 February 2024 seeking to reinstate the dismissed application dated 9 October 2023. On 30 April 2024, Mr. Sagwe was in court for the applicant whereas Mr. Marita was in court for the respondents. I gave directions for counsel to file submissions within 7 days and the application be heard inter partes on 16 May 2024. Counsel for the applicant did not file submissions as directed to urge the motion and neither did he appear in court on 16 May 2024 for the inter partes hearing of the application. I proceeded to dismiss that application for non-attendance and failure to prosecute.
6. This application has now been filed seeking to set aside the orders made on 16 May 2024 so that the application dated 6 February 2024 and that of 9 October 2023 are reinstated. The application is based on grounds inter alia that failure to appear was not intentional and was caused by technical defect of counsel's laptop.
7. The application is opposed by a replying affidavit sworn by the 5th respondent. He has pointed out that the suit was instituted 10 years ago and was dismissed after several years of inaction. He has deposed that if there was a technical hitch of counsel's laptop he could have reached out to his counterpart or any advocate to inform court of the hitch. He has added that there is inordinate delay as the application has been filed 6 months later. He has averred that reinstatement of the suit that was filed 10 years ago will greatly prejudice them.
8. I have considered the above together with the submissions filed.
9. The history of the case speaks for itself. It was indeed filed 10 years ago. It was dismissed 3 years later in 2018 for want of prosecution. Notably, despite being served, counsel for the applicant did not bother appearing on the day for hearing of the notice to show cause why the suit should not be dismissed for want of prosecution. It is said that this suit was stayed pending hearing of a criminal case that the applicant faced. I have seen no order staying this suit, but even assuming there was such an order, it was



incumbent on the applicant to appear in court to give that as a reason to save the case from dismissal. He never did. Moreover, even his application to set aside the order for dismissal was itself dismissed for non-attendance and so too the subsequent application to reinstate the dismissed application.

10. With that history in mind, I do not see how this court can exercise its discretion in favour of the applicant. He brought a case and it was upon him to prosecute it. He cannot keep a case pending when he does not appear in court at all. He may have a right to be heard but the defendants also have a right not to be prejudiced by a litigant who wants to keep them in court indefinitely while not prosecuting his case and/or his applications.
11. It will further be observed that the order of dismissal of the application dated 6 February 2024 was made on 16 May 2024. The present application was filed on 10 December 2024 which is more than 6 months later. If indeed it was a technical failure of a laptop by counsel on 16 May 2024, you would expect the application to be filed immediately, the same day or even the day after. That delay of 6 months is unexplained and is inordinate in light of the reasons given.
12. The above aside, I have seen on record that the applicant did file a notice of appeal dated 27 May 2024 to appeal the orders made on 16 May 2024. He therefore was aware of the order of dismissal by 27 May 2024. In any case it would appear that he intends to appeal that order and this application is therefore an afterthought.
13. For the reasons above, I regret my inability to exercise my discretion to reinstate the dismissed applications and/or the suit herein. This application is for dismissal and it is hereby dismissed. The case remains dismissed for want of prosecution as ordered on 8 April 2016. I observe that the case was dismissed with no orders as to costs. However, the respondents will have the costs of the dismissed applications, including this application, and are at liberty to tax the same.
14. Orders accordingly.

DATED AND DELIVERED THIS 6TH DAY OF MAY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Ms. Omas h/b for Mr. Ochoki for the defendant/respondent

No appearance on the part of Mr. Sagwe for the plaintiff/applicant

Court Assistant – David Ochieng.

