



Maisiba v Municipal Council of Ogembo & 2 others (Environment & Land Case E009 of 2023) [2025] KEELC 4410 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE E009 OF 2023**

**M SILA, J
JUNE 11, 2025**

BETWEEN

TERESA NYANSIABOKA MAISIBA PLAINTIFF

AND

MUNICIPAL COUNCIL OF OGEMBO 1ST DEFENDANT

KISII COUNTY GOVERNMENT 2ND DEFENDANT

HON JAMES ONDARA AKA PARADISO 3RD DEFENDANT

RULING

1. The application before me is that dated 25 February 2025 filed by the plaintiff herein. The applicant seeks the reinstatement of her suit which was dismissed on 24 February 2025 for non-attendance. I have not seen anything filed to oppose the motion.
2. By way of background, this suit was commenced through a plaint filed on 21 June 2023. The plaint was filed by the law firm of M/s Nyagaka, Mosota, Isaboke, Kerosi Ondieki & Associates Advocates. The case of the applicant is that she is the registered proprietor of the land parcel Majoge/Boochi/3638 upon which she has developed a commercial building. She averred that the 1st respondent, the Municipal Council of Ogembo, had issued threats that they will demolish her building on the claim that it is on a road. In the suit the applicant sought orders to permanently restrain the respondents from demolishing her structures.
3. Together with the plaint, the applicant filed an application for an interlocutory injunction pending hearing of the suit. I allowed the application in my ruling of 26 July 2023. After that the matter was mentioned a couple of times with counsel on record for the applicant not appearing at all. I eventually fixed the matter for hearing and adjourned a couple of times on reasons given by counsel for the applicant. On 24 February 2025, the case came up for hearing and counsel for the applicant applied to adjourn so that he can reply to the counterclaim of the 1st respondent. I declined to adjourn as I



observed that the counterclaim had been filed way back on 7 May 2024. I allocated time for hearing but the applicant and her counsel were absent. I proceeded to dismiss the applicant's case for non-attendance. I also dismissed the counterclaim for non-attendance.

4. This application was then filed by the applicant and I have already mentioned that it seeks a reinstatement of the dismissed suit. It also seeks orders to change counsel from M/s Nyagaka, Mosota, Isaboke, Kerosi Ondieki & Associates to M/s Nyagaka S.M & Company Advocates. The applicant contends that she was let down by her erstwhile counsel who never informed her of the progress of the case. She avers that she has a good case which she ought to be given a chance to ventilate.
5. I have given the application due consideration. The reason given by the applicant is that she was not appraised of the hearing date by her counsel. I have already mentioned that on many occasions that the matter was mentioned there was no appearance on the part of counsel for the applicant. It is very probable that she was actually let down by her counsel.
6. Given the foregoing, I am persuaded to allow the application and reinstate the case of the applicant. It is so reinstated. The applicant's prayer to also change counsel is allowed.
7. There will be no order as to costs.
8. Orders accordingly.

DATED AND DELIVERED THIS 11 DAY OF JUNE 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Okiamba for the plaintiff/applicant

Mr. Oirere for the defendant/respondent

Court Assistant – Michael Oyuko

