



REPUBLIC OF KENYA



KENYA LAW
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**Muntukei v Magana Holdings Limited & another (Environment & Land
Case 796 of 2017) [2025] KEELC 5244 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5244 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 796 OF 2017**

**MD MWANGI, J
JULY 10, 2025**

BETWEEN

PAUL KIROKET OLE MUNTUKEI PLAINTIFF

AND

MAGANA HOLDINGS LIMITED 1ST DEFENDANT

THE LAND REGISTRAR, KAJIADO 2ND DEFENDANT

(In respect of the notice of motion dated 24th September 2024 brought under Order 45 Rule 1 (1) of the Civil Procedures Rules and Sections 1A, 1B, 3A and 63 (e) of the Civil Procedure Act seeking review of the decision dismissing the Plaintiff's suit on 21st September 2023)

RULING

Background

1. This ruling is in respect of the notice of motion dated 24th September 2024 by the Plaintiff seeking to review the decision of the court dismissing his suit on 21st September 2023. The application is premised on the grounds on the face of it and on the verifying affidavit of Paul Kiroket Ole Mutukei. The Plaintiff asserts that the suit was dismissed on the 21st September 2023 for want of prosecution. He pleads that he was not aware of the notice to show cause issued by the court to him to show cause why his suit should not be dismissed for want of prosecution. He states that he came to learn that his advocate had been ailing for long and eventually passed on in the month of August 2023. He avers that he has always been ready and willing to prosecute his suit.
2. The application is opposed by the 1st Respondent vide the replying affidavit sworn by one, Inviolata Achola on 24th January 2025. The deponent terms the application by the Plaintiff fatally incompetent, vexatious and devoid of merit. She asserts that even after the dismissal of the suit, the Applicant took



a whole one year to file the present application for reinstatement of the suit further underscoring his indolence.

3. The deponent further deposes that the 1st Respondent relying on the finality of the dismissal of this suit withdrew its appeal in Nairobi Court of Appeal No. 462 of 2018 based on the Applicant's apparent abandonment of this matter.
4. The 1st Respondent asserts that the Applicant had not provided any credible explanation for his inaction and the inexcusable delay in prosecuting the suit. His conduct constitutes an abuse of the court process. Litigation must come to an end.
5. The 1st Respondent too filed a second replying affidavit sworn by one Soila Mungai, its Chief Executive officer. The deponent reiterates the assertions by Inviolata Achola insisting that the delays by the Plaintiff in this matter have caused the 1st Respondent significant prejudice including financial costs, anxiety and disruption of its operations. The 1st Respondent had already closed the matter with its auditors with no legal or financial reserve based on the conclusion of the case in this court and in the Court of Appeal.
6. The court notes that both sides filed submissions expressing their respective positions in respect to the application before the court.

Issues for determination.

7. From the perusal of the court's record, the Plaintiff's suit was dismissed on 21st September 2023 under the provisions of Order 17 rule 2 of the Civil Procedure Rules pursuant to a notice to show cause issued by the court. Rule 6 of Order 17 (introduced by legal Notice No. 151 of 2020) specifically provides that a party in a suit that has been dismissed under Order 17 may apply to the court after dismissal of the suit.
8. The Plaintiff instead of moving the court under the provisions of Rule 6 of the Order 17 has instead filed an application for review under Order 45 rule 1 (1) of the Civil Procedure Rules. The issue then that glares at the court is whether the application is competent.

Determination

9. The provisions of order 45 rule 1 of the Civil Procedure Rules are clear on the grounds upon which a court may review its decree or order from which no appeal has been preferred, namely;
 - a. The discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the Applicant, or could not be produced by him at the time when the decree was passed or order made;
 - b. Some mistake or error apparent on the face of the record; or
 - c. Any other sufficient reason.
10. None of the grounds above has been pleaded in the Plaintiff's application. It is therefore obvious that the Plaintiff has moved the court under the wrong provisions of the law. The Plaintiff ought to have moved this court under the provisions of Rule 6 of Order 17 of Civil Procedure Rules.
11. Ochieng J.A in the case of Mariga & 2 others –vs- Mariga & another (2024) KECA 470 (KLR), addressing a similar issue where the Applicant filed an application under the wrong provisions of



the law cited the Supreme Court of Kenya decision in the case of Daniel Kimani Njihia –vs- Francis Mwangi Kimani & another (2015) eKLR, where the court was emphatic that,

“In the Hermanus case, this court had indicated how it should be moved, thus (paragraph 23) ...it is trite law that a court of law has to be moved under the correct provisions of the law”. Hence without thus identifying the proper legal framework for the motion, an application is liable to be struck out”.

12. A similar position was upheld in the case of Michael Mungai –vs- Housing Finance Co. (K) Limited and 5 others (2017) eKLR, where learned judge in the above cited case concluded that the application was liable to be struck out having been hinged on the wrong provisions of the law.
13. That must be the fate of the Plaintiff’s application in this case based on the above cited binding precedents.
14. I hereby strike out the Plaintiff’s application dated 24th September 2024 with costs to the 1st Defendant/ Respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 10TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Achola for the 1st Respondent

N/A by the Plaintiff and the 2nd Respondent

Court Assistant: Mpoye

