



Mwangombe & 5 others v Rea Vipingo Plantations Ltd & 3 others; Commission for Human Rights & Justice & 2 others (Interested Parties) (Environment & Land Case E030 of 2023) [2025] KEELC 5011 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E030 OF 2023**

**JO OLOLA, J
JULY 4, 2025**

BETWEEN

**WYCLIFFE TEMBO MWANGOMBE 1ST PLAINTIFF
NGUMBAO KENGA IHA 2ND PLAINTIFF
JOSEPH KARISA FONDO 3RD PLAINTIFF
ESTHER KACHE MWAYELE 4TH PLAINTIFF
GEOFFREY KAMAU NGOIYA 5TH PLAINTIFF
BAMBANI KILIO C.B.O 6TH PLAINTIFF**

AND

**REA VIPINGO PLANTATIONS LTD 1ST DEFENDANT
VIPINGO DEVELOPMENT PLC FORMERLY VIPINGO DEVELOPMENT
LTD 2ND DEFENDANT
CENTUM DEVELOPMENT PLC 3RD DEFENDANT
MOMBASA CEMENT LTD 4TH DEFENDANT**

AND

**COMMISSION FOR HUMAN RIGHTS & JUSTICE INTERESTED PARTY
THE LAND REGISTRAR MOMBASA INTERESTED PARTY
THE ATTORNEY GENERAL INTERESTED PARTY**



RULING

1. I have before me for determination two applications. The first application is a Notice of Motion dated 28th March, 2025 as filed by Vipingo Developments PLC formerly known as Vipingo Development Ltd (the 2nd Defendant). The second application is another Notice of Motion dated 3rd April, 2025 filed jointly by the five (5) Plaintiffs herein.
2. The genesis of the two applications are the proceedings which took place in this matter on 26th March, 2025. On the said date when the matter came up for hearing at 9.00 a.m. Mr. Yose the Learned Counsel acting for the Plaintiffs informed the court that he was not ready to proceed and asked for an adjournment as he had lost communication with his clients. The Learned Counsel informed the court that as a result of the loss of communication, he had filed an application to cease from acting for the Plaintiffs although the same was yet to be heard.
3. The application for adjournment by the Plaintiff's Counsel was strenuously opposed by the Learned Advocates representing the other Defendants as well as the Interested Parties herein. Having heard the parties, this court declined to adjourn the matter and the same was fixed for hearing at 11.00 a.m. on the same day.
4. At 11.00 a.m. when the matter resumed in open court, Counsel for the Plaintiff informed the court that he still had the same predicament and that he had no witness to call. Having called out the matter, the court proceeded to dismiss the Plaintiffs' suit for want of prosecution. As the 2nd Defendant had a Counterclaim, the court proceeded to hear the testimony of the 2nd Defendant's witness whereupon the matter was closed. The parties were granted 7 days a piece to file their respective submissions with judgment being set to be delivered on 29th May, 2025.
5. Some two days later, the 2nd Defendant filed the first application herein under Certificate of Urgency seeking orders as follows

“4. That pending delivery of the final Judgment in this suit, this Honourable Court be pleased to restrain and bar all dealings over the following Titles which were subdivided from the duplicate Title Land Reference MN/IV/663 - C.R. 79015 whether by the Plaintiff/ Respondents and the Land Registrar Mombasa and Kilifi or any other official of the Ministry of Lands or any other person claiming any interest in them:-

- a. Takaungu Mavueni/Mkwajuni-Mkomani Block 1/2 issued at Kilifi Land Registry;
- b. Takaungu Mavueni/Mkwajuni-Mkomani Block 1/3 issued at Kilifi Land Registry;
- c. Takaungu Mavueni/Mkwajuni-Mkomani Block 1/4 issued at Kilifi Land Registry;
- d. Takaungu Mavueni/Mkwajuni-Mkomani Block 1/5 issued at Kilifi Land Registry; and
- e. Takaungu Mavueni/Mkwajuni-Mkomani Block 1/6 issued at Kilifi Land Registry.



6. The 2nd Defendant's application is supported by an Affidavit sworn by its Advocate on record Andrew Mukite Musangi and is premised on the grounds that:
- i. The 2nd Defendant is the bona fide owner of the following parcels of land:
 - a. C.R 7314/1 -MN/117/1 of section IV Mainland North- Land Survey Plan 229529 and MN/120/1 of Section IV Mainland North Land Survey Plan- 229533-232.843 Ha;
 - b. C.R 9732/1 Subdivision 119/2 of Section IV Mainland North -Deed Plan No. 229532 measuring 75.99 Ha; and
 - c. C.R. 9823/1 subdivision 118 of Section IV Mainland North -Deed Plan No.15254 measuring 16.17 Ha.
 - ii. That the present suit was necessitated by the existence of a duplicate title Number L.R. MN/IV/663- C.R. 79015 which was mysteriously issued on 13th December, 2022 in favour of the 1st to 5th Respondents herein;
 - iii. That this Honourable Court issued injunctive orders on 11th March, 2024 against all parties in this suit barring them from interfering in any manner with the suit properties or their Titles herein pending hearing and determination of this suit;
 - iv. That furthermore, during the subsistence of the suit and prior to issuance of the status quo orders, the 2nd Defendant took the precautionary step of registering a restriction against the duplicate Title that had been issued to the Plaintiffs on 13th January, 2023;
 - v. That this matter came up for hearing on 26th March, 2025 and surprisingly, the Plaintiffs did not attend Court to tender evidence in support of their duplicate title L.R. No. MN/IV/663 -C.R. 79015. This led to this Honourable Court dismissing the 1st to 5th Plaintiffs case. The 2nd Defendant then duly prosecuted its Counterclaim after which the matter was slated for Judgment on 29th May, 2025.
 - vi. That shortly after the hearing, the 2nd Defendant received information and documentary evidence indicating that the 1st to 5th Plaintiffs and the 2nd Interested Party had undertaken and facilitated the following illegalities and fraudulent activities on the duplicate title numbered Land Reference MN/IV/663-C.R 79015:-
 - a. On 8th December, 2023, the 2nd Interested party illegally and surreptitiously facilitated the removal of the Restriction dated 13th January, 2023 registered under section 78 of the [Land Registration Act](#) against the duplicate title Numbered Land Reference MN/IV/663 -C.R 79015;
 - b. On 15th February, 2024, the 1st to 5th Respondents surrendered their duplicate title Numbered Land Reference MN/IV/663 -C.R 79015 and contemporaneously applied to Kilifi Land Registry for sub-division and conversion of the suit properties into five parcels namely; Takaungu Mavueni/Mkwajuni-Mkomani Block 1/2; Takaungu Mavueni/ Mkwajuni -Mkomani Block 1/3; Takaungu Mavueni /Mkwajuni-Mkomani Block 1/4; Takaungu Mavueni /Mkwajuni-Mkomani Block 1/5 and Takaungu Mavueni/ Mkwajuni-Mkomani Block 1/6 registered the resultant five (5) parcels in their names; and



- c. The 1st to 5th Plaintiffs, in a devious well-orchestrated scheme, are now seeking to transfer or may have transferred these new titles in collusion with the Land Registrar (the 2nd Interested party) to third-party companies in a bid to frustrate the Judgment of this Court and in a bid to circumvent the justice process that they refused to subject themselves to before this Court.
 - vii. Allowing any third-party transactions on the new five titles will only serve to complicate and compound the outcome of this suit further and will possibly expose the 2nd Defendant to extended further litigation against third parties who ought to have been notified by the Land Registrar that at all material times, there were legal impediments to the registration of new transactions on this land;
 - viii. In as much as this matter is due for delivery of Judgment on 29th May, 2025 it is extremely necessary, right, just and expedient that this Court inhibits and restrains any further illicit dealings on the five parcels of land borne of the duplicate title Numbered Land Reference MN/IV/663-C.R 79015;
 - ix. The said Titles were processed and issued in contravention of the express status quo orders issued on 11th March, 2024; and
 - x. It is also in the best interest of the general public that such restrictions on dealings be on these five (5) titles to protect unsuspecting members of the public from falling prey to the mischievous and fraudulent schemes being perpetuated by the Plaintiffs.
7. As it turned out, as at the time the two applications came up for hearing on 24th April, 2025, none of the Plaintiffs had filed any response to the 2nd Defendant's application. From a perusal of the record herein, it is evident that following the two applications made by the Plaintiffs dated 6th April, 2023 and 20th April, 2023 respectively, the Honourable Justice L.L. Naikuni in a Ruling delivered on 11th March, 2024 ordered the maintenance of the status quo in regard to the suit properties and also issued an order of injunction restraining the Defendants from interfering with the said properties.
 8. From a perusal of the Supporting Affidavit to the 2nd Defendant's application, it is apparent that in blatant disregard of the orders for the maintenance of the status quo, the 1st to 5th Plaintiffs proceeded to surrender the title numbered Land Reference MN/IV/663 – CR 79015 which was in their custody and contemporaneously applied at the Kilifi Land Registry for the sub-division and conversion of the suit properties into five parcels which they registered in their names.
 9. During the hearing of the two applications, Mr. Makworo, Learned Counsel for the Plaintiffs conceded that indeed new titles have been issued in the names of the Plaintiffs and sought to have the Land Registrar to be given an opportunity to state why he proceeded with the said registration. To the best of my knowledge, I am not aware of any circumstances that would allow a party in a matter before the court to first disobey the court order and then be allowed to come explain the basis of this disobedience.
 10. As the Court of Appeal reiterated in *Shimmers Plaza Limited –vs- National Bank of Kenya Limited* (2015) eKLR;

“... Court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-



“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

11. In the circumstances herein and having found that the acts of the 1st to 5th Plaintiffs as well as those of the 2nd Interested Party were in defiance of the court orders issued on 11th March, 2024, I find merit in the 2nd Defendant’s Motion dated 28th March, 2025 and I allow the same in terms of prayer No. 4 thereof.
12. By the second application dated 3rd April, 2025, the Plaintiffs have sought for orders of reinstatement of their suit. They have urged the court to issue an order re-opening their case and to be allowed to prosecute the same on the basis that there was an error apparent on the face of the court record and that there was new evidence that would permit the court to review the orders dismissing their suit for want of prosecution.
13. In addition, the Plaintiffs pray for an order restraining the Defendants, their agents and/or employees from gaining possession, occupation, enjoyment and derivative use of the suit property being Land Reference Number 663/IV/MN – CR 79015 located south of Takaungu in Kilifi County pending further directions of the court.
14. The Plaintiffs’ application is supported by an Affidavit sworn by Wycliffe Tembo Mwang’ombe (the 1st Plaintiff) and is premised on the grounds that:
 - a. That the proceedings, Orders/Ruling issued by the Honourable Court on the 26th March, 2025 have the import and effect of the undermentioned: -
 - i. That the suit to wit; the Plaint, Summons to Enter Appearance and all consequent pleadings filed by the Plaintiffs have been dismissed;
 - ii. That the main Plaintiff had an irreversible communication breakdown with his then Advocates, this was further accentuated by an illness which had bedridden the said 1st Plaintiff whose attempts to log into the Honourable Courts virtual Platform failed;
 - iii. That it is manifestly clear that the then Advocates on record did not inform the Court as to the correct health status of the 1st Plaintiff, further this information would have otherwise implored the Honourable Court on compassionate grounds to otherwise consider any application on the floor of the Court other than the orders as issued on the 26th day of March 2025;
 - iv. That it follows without doubt, that the Court has inherent unrestricted jurisdiction to vary, set-aside and /or review its own orders where sufficient grounds such as the case - in-point herewith have established sufficiently so to warrant setting aside of the orders issued herewith to avert a grave miscarriage of justice; and
 - v. That it is manifestly clear that the rules of natural justice are on trial in the present circumstances, denial of audience before a seat of justice ought to be a circumstance of last resort especially on such emotive issues as that of land which is a scarce commodity, an economic enterprise in the present circumstance it is the only known home to the Plaintiffs.
 - b. That there are good and sufficient grounds to warrant grant of the orders sought;



- c. That currently the merits of the suit as progressed by the Plaintiffs have not been heard by the Court which is not only a foul of the land regime, statute but clear transgressions as against the proprietary rights of the Plaintiffs, a Constitutional protected right;
 - d. That this application obliges the Honourable Court to suo motto reinstate the Plaintiffs' suit, the mistake herewith having been committed not out of the Plaintiffs own making but a clear misinformation, further the oxygen principles as progressed by the Civil Procedures Rules envisage a scenario where the Honourable Court can heave off the burden of being dismissed unheard by clear mistake of Counsel;
 - e. That the 1st - 4th Defendants will very well proceed to issue threats and actually violently vacate the Plaintiffs consequent to the said proceedings an orders issued herewith which disenfranchises the Plaintiffs of the proprietary interest herewith, without being afforded the sacrosanct "right to be heard prior to being condemned.";
 - f. That parameters and realm of setting aside and review have duly been satisfied hence the Honourable Court divested of the authority herewith ought to immediately converge and avoid a miscarriage of justice being permeated herewith;
 - g. That the 1st - 4th Defendants will not suffer any prejudice in the event the orders sought herein are granted as prayed;
 - h. That the damage to be suffered by the Plaintiffs on a balance of scale outweighs that of 1st - 4th Defendants; and
 - i. That it is in the larger interest of justice that the Honourable Court does grant the orders sought herein.
15. Rea Vipingo Plantation Limited (the 1st Defendant) filed Grounds of Opposition dated 23rd April, 2025 objecting to the Plaintiff's application on the grounds that:
- 1. The Plaintiffs have not met the requirement of reinstatement;
 - 2. The Plaintiffs have not shown or demonstrated any sufficient reason for non- attendance;
 - 3. The application is designed to assist the Plaintiffs who have deliberately sought to obstruct and delay the course of justice;
 - 4. The 1st Defendant is desirous of finalizing this matter expeditiously;
 - 5. The Plaintiffs have failed to demonstrate sufficient grounds or provide evidence in support of their claim of illness when the suit came up for hearing and was dismissed for non- attendance; and
 - 6. The application will prevent the just and expeditious disposal of this suit.
16. The 2nd Defendant was equally opposed to the Plaintiffs' application. In a Replying Affidavit again sworn on its behalf by its Advocate on record Andrew Mukite Musangi, the 2nd Defendant asserts that the statement by the 1st Plaintiff that he was unwell and that he was unable to come to court as the Plaintiffs' main witness is a lie as it was Ms. Esther Kache Mwayele (the 4th (Plaintiff) who was scheduled to testify but failed to attend court.
17. The 2nd Defendant further avers that despite the claim by Mr. Edwin Yose Learned Counsel for the Plaintiffs, that he had filed an application to cease acting for the Plaintiffs, no such application was filed. He further avers that the issue of the sickness of the 1st Plaintiff was raised by Mr. Yose on the hearing



date at 11.00 a.m. as a secondary ploy to obtain an adjournment and the same issue was dismissed and cannot be a reason for the reinstatement of the suit.

18. The 2nd Defendant further avers that the matter did not proceed ex-parte as Mr. Yose Advocate was present in court at all times and when called to examine the 2nd Defendant's witness, he told the court that he did not have any question for the witness.

19. I have carefully perused and considered the application for reinstatement of the suit together with the responses thereto. The Plaintiffs have asserted in support of their application that the reason of their failure to attend court on the hearing date was the fact that the main Plaintiff, Wycliffe Tembo Mwang'ombe, was ill and that there was a communication breakdown between himself and the Advocate then on record and that the case be reopened to enable them prosecute their case.

20. In support of the application, the said Wycliffe Tembo Mwang'ombe (the 1st Plaintiff) depones as follows at Paragraph 4 of the Supporting Affidavit:

“ 4. That I can surely and most sincerely attest on oath that on the very morning of the 26th day of March, 2025 I did communicate to my then-Advocates - it is only upon perusal of the record of the Honourable Court that I did realize the gravity of the submissions of Counsel to the Honourable Court which indeed were devoid of instructions.”

21. That assertion by the 1st Plaintiff would mean that the Plaintiffs were aware that the suit was coming for hearing on 26th March, 2025. They could not have failed to know for the record herein reveals that the date was first fixed before the Honourable Justice Naikuni on 26th November, 2024. It was confirmed again on 6th March, 2025, some 20 days before the date scheduled for hearing.

22. The assertion also means that the reasons given by Mr. Yose Advocate to obtain an adjournment on the hearing date on account that he had lost contact with his clients was untrue and was nothing but a mere ruse contrived to cause an unwarranted adjournment of the hearing.

23. While the 1st Plaintiff avers that he fell ill on the morning of the hearing and that he was advised at Mwembeni Medical Clinic to take a 24-hour rest, he does not explain the whereabouts of the four other Plaintiffs or give any reasons for their failure to attend court.

24. Indeed, while the 1st Plaintiff styles himself as the “main Plaintiff” and that he was the one scheduled to testify on the date of the hearing, the record herein does not support that position. By their Letter of Authority dated and filed in Court on 6th April, 2023, all the 5 Plaintiffs states as follows:

“ We the undersigned Plaintiffs have on this date appointed Esther Kache Mwayele to act on our behalf in this Land Case.”

25. As it were, the said Esther Kache Mwayele is the 4th Plaintiff herein and it is her statement also dated 6th April, 2023 that the Plaintiffs intended to rely on at the trial. There was absolutely no explanation offered in the Supporting Affidavit to the Plaintiff's application why the said Esther or any other Plaintiff failed to attend court on the date fixed for the hearing.

26. As the Court of Appeal stated in *Habo Agenceis Limited –vs- Wilfred Odhiambo Musingo* (2015) eKLR:

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized



that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

27. At paragraph 10 of the Supporting Affidavit, the 1st Plaintiff depones that there is need for examination and possibly cross examination of the evidence tendered before the court and that the same was denied by the stroke of the pen due to mistake of the counsel that has now been visited on innocent litigants. I was however unable to see how one can reach such a conclusion. The court record bears witness to the fact that the Plaintiffs were represented by their duly appointed Counsel at the hearing and that the said Counsel, in his own wisdom, chose not to cross examine the Defendant’s witness.
28. As was held in the case of South Empire Traders –vs- Nakuru Players Theatre Club (2018) eKLR:
- “The reinstatement of any application or suit that has been dismissed for non-attendance and/or for failure to prosecute ought not be considered to be automatic. Cogent reasons must be given for the non - attendance, for failure to attend court is a serious issue, and any person failing to attend court must be ready to bear the consequences which may arise therefrom. No applicant should imagine that all he/she needs to do is file an application for reinstatement and that the same will be allowed as a matter of course and indeed, if courts adopt that stance, it will greatly prejudice the administration of justice for all that a person will need to do is fail to appear, and sit in the comfort zone, that he can always file an application for reinstatement which will be allowed. In this instance, I am afraid that I am not persuaded by the reasons tabled.”
29. Flowing from the above, I am equally not satisfied that the Plaintiffs have given any sufficient and/or satisfactory explanation for their absence and failure to prosecute their suit and to warrant its reinstatement.
30. The Plaintiffs have also prayed for an order of review of the orders issued on 26th March, 2025 on account of an error apparent on the face of the record and that there was new evidence that would permit the court to grant an order of review.
31. As was stated by the Court of Appeal in National Bank of Kenya Limited –vs- Ndungu Njau (1997) eKLR.
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.”
32. Considering the facts of this matter as enumerated hereinabove, I was not persuaded that there is any error or omission on the part of the record.
33. In the premises I did not find any merit in the Plaintiff’s Notice of Motion dated 3rd April, 2025. I dismiss the same with costs to the 1st and 2nd Defendants.
34. As stated earlier, the 2nd Defendant’s Motion dated 28th March, 2025 has merit and is allowed in terms of Prayer No. 4 with costs.

RuliNG DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025

.....

J.O. OLOLA



JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Egunza for the Plaintiff

Mr. Kahura for the 1st Defendant

Mr. Musangi for the 2nd Defendant

Ms. Amugune for the 1st Interested Party

Mr. Onyon for the 4th Defendant

Mr. Kemei for the 2nd and 3rd Interested Parties

