



**Vincent v Kotiani & another (Environment and Land Appeal
E026 of 2023) [2025] KEELC 5217 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E026 OF 2023**

EC CHERONO, J

JULY 3, 2025

BETWEEN

JULIANA NASAMBU VINCENT APPELLANT

AND

VINCENT SIRENGO KOTIANI 1ST RESPONDENT

AGGREY MAKARI NALIANYA 2ND RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 19/02/2025 seeking the following orders:
 - a. This application be certified urgent.
 - b. That there be a temporary stay of execution of Judgment delivered on 14th February 2024.
 - c. This Honorable Court be pleased to set aside and review the ruling delivered on 18th February 2025 and permit the matter for ruling as the Respondent had already complied as directed by the court on 29th January 2025.
 - d. Costs of this Application be provided for.
2. The application is based on the grounds apparent on the face of the application supported by the affidavit of one Wekesa Phinny Wanjala, an advocate of the High Court in conduct of the matter on behalf of the Respondents/Applicants herein where she deposed that despite directions being taken and counsel conceding to take a judgment date, the Respondent herein had not served the Respondents/Applicants herein with submissions nor uploaded the same in the system as directed by the court to enable the Respondents/Applicants put their response before judgment was delivered. That this mistake was discovered after judgment was delivered and the Respondents/Applicants herein filed an application dated 19/12/2024 which was set down for mention for further directions on 29/01/2025 and on 18/02/2025, counsel did not attend and the said application was dismissed for



want of prosecution. That counsel's failure to attend court on 18/02/2025 was because she was unwell. That the said error should not be visited upon his client and that the Appellant/Respondent herein will not suffer any prejudice if the orders sought are granted.

3. In response, the Appellant/Respondent filed a replying affidavit sworn on 28/02/2025 in which she deposed that the so called ruling delivered on 18/2/2025 is unknown to her and neither was she served with any application to that effect and that the notice of motion herein dated 19/02/2025 purportedly seeking orders for stay of execution of judgment delivered on 14/02/2024 is equally strange and unknown to her. That the notice of motion dated 19/2/2025 is misleading and jumbled up as the application seeks to stay execution yet the same has not been heard and determined. That she does not understand what was coming up on 18/02/2025 and the alleged directions of 29/01/2025 since the only directions she is aware of are the orders given on 20/2/2025. She deposed that the Applicants have filed an appeal through another firm of advocates and that they have blatantly disregarded the judgment of the court by cutting down trees and cultivated on the suit land in total breach of the orders of the Court issued on 14/11/2024.
4. When the application came for directions, the parties agreed to have it canvassed by written submissions.
5. The Respondents/Applicants filed their submissions dated 28/04/2025 in which they raised three issues. First, they submitted that this Honorable court delivered a ruling on 18th February 2025 against the Respondent where he had sought to reinstate another application dated 19th December 2024 where both parties did not participate but was also dismissed and did not put in submissions. They submitted that there is therefore need to stay the execution of the said rulings and issue fresh directions on the hearing of appeal for the interest of justice and to allow the Respondents submissions in order for them to be given a chance to be heard on merit.
6. Secondly, it was submitted that this being a land dispute and an appeal, it is pertinent and for the interest of justice that each party be accorded a chance to submit their documents and be heard on merit. That the Respondent had filed his response to the Appeal and had served the same awaiting consideration of the court which did not happen. The Respondents/Applicants argued that since the court had directed the appeal to be canvassed through written submissions, it is proper for the interest of justice to give the Respondents an opportunity to put the only documents that form the substance of their defense.
7. Thirdly, the Respondents/Applicants submitted that directions on the appeal were taken that the same be canvassed by written submissions but the court proceeded to deliver a Judgment without considering the submissions of the Respondents/Applicants who were waiting to be served with submissions by the Appellant/Respondent. That this prompted the Respondents/Applicants to file the application dated 19/12/2024 which was dismissed for non-compliance but they argued that they had complied. They urged the court to allow the application as prayed.

Analysis and determination.

8. Having considered the application and the written submissions, I find that the only issue for determination is whether the Respondents/Applicants are entitled to the orders sought.
9. I must state from the onset the application as presented is poorly drafted. It is unclear both on the material facts and the specific prayers sought. The replying affidavit has not also done much to assist the court in the circumstances. This Court has been distressed attempting to understand what the Respondent/Applicants truly seek and has struggled to summarize the pleadings without any certainty. Nevertheless, I shall proceed to determine the application on merit.



10. The Respondent/Applicant in prayer (b) & (c) of the application is seeking for stay of the judgment delivered on 14/02/2024 and the setting aside of the ruling delivered on 18/02/2025. The said ruling dated 18/02/2025 dismissed the application dated 19/12/2024 for want of prosecution. The said application dated 19/12/2024 had sought for stay of the judgment delivered on 14/11/2024 and for the setting aside and review of the said judgment. The said application dated 19/12/2024 was based on ground inter alia that the court did not consider the submissions of the Respondent/Applicant.
11. I now consider the order for setting aside and review as sought which I believe underpins the prayer for stay of the judgment/decree in place. The jurisdiction of a court or Tribunal to review or set aside its decision/order is wide and unfettered. In *Shah v Mbogo and Another* [1967] EA 116 the Court of Appeal of East Africa held that: “This discretion (to set aside ex parte proceedings or decision) is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”
12. The legal threshold to consider before exercising the said discretion is whether the Applicant has demonstrated sufficient cause. It is my view that such would be a valid consideration in an application for dismissal of an application for non-attendance or for want of prosecution. In this case the application was dismissed for want of prosecution.
13. Counsel for the Respondents/Applicants has explained that he was on sick leave on 18/02/2025 when the application dated 19/12/2024 was dismissed. However, no documentary evidence has been placed before this Court to support that assertion. A medical note, along with a formal application and approval of the said leave, would have assisted in substantiating the claim. It is trite that this is a court of record, and proceedings must be guided by verifiable evidence. The Court cannot act on bare assertions or operate in a vacuum. Further, the present application is filed approximately two months after the impugned orders were issued and no explanation has been offered for the delay. In my view, the delay is inordinate, unexplained, and inexcusable, and it goes against the timely administration of justice.
14. Further and even as the Respondents/Applicants seek the setting aside and review of the orders issued on 18th February 2025, no prayer has been made for reinstatement of the application that was dismissed on that date. As such, the Court is left in doubt as to the purpose or effect of the orders now sought, rendering the application procedurally and substantively uncertain.
15. It is therefore my finding that the prayer for setting aside and reviewing the orders of 18/02/2025 are untenable.
16. On the issue of stay, it is pertinent to note that there is an existing judgment in this appeal which was delivered on 14/11/2024. It is not in contention that directions were taken for the appeal to be canvassed by way of written submissions on 01/07/2024 in the presence of counsel for both parties. On 23/09/2024, this matter came up for compliance where Mr. Ombido for the Appellant/Respondent stated that the Appellant/Respondents had filed and served their submissions. Mr. Wanjala who was appearing for the Respondent/Applicants confirmed service of submissions by the opposing counsel and sought for 14 days to file their submissions and a judgment date was set for 14/11/2024.
17. It is important to note that between the date when the Respondent/Applicant was directed to file submissions on 23/09/2024 and the date judgment was delivered on 14/11/2024 is a span of approximately fifty-one (51) days. While the Respondent/Applicant alleges that he inadvertently confirmed service of the Appellant/Respondent’s submissions, he has not explained what steps, if any, he took during this considerable period prior to the delivery of judgment to file his submissions or bring to the attention of the court that they had not been served with any submissions by the opposing party



In any event, any pleadings are filed through e-filing system where they have access to any documents filed by the opposing party even without being served. The court record confirms that no application was made to arrest the judgment of this court. In my view, the Respondent/Applicant exhibited clear indolence, and his inaction is inexcusable.

18. Since the prayer for stay of the judgment has to be pegged on an identifiable event pending action, or specific outcome which this court presumes is the order for review and setting aside of the orders of 18/02/2025 which this court has already declined, the said prayer for stay also fails.
19. In the end, I find that the Respondents Application dated 19th February, 2025 lacks merit and the same is hereby dismissed with costs.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 3RD DAY OF JULY, 2025.

.....

HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Ombito for the Respondent.
2. Mr. Wekesa for the Appellant.
3. Bett C/A.

