



REPUBLIC OF KENYA



**Kandiawo v Chianda & another (Environment and Land Appeal
7 of 2021) [2024] KEELC 5211 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5211 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 7 OF 2021
GMA ONGONDO, J
JULY 11, 2024**

BETWEEN

WALTER ODOYO KANDIAWO APPELLANT

AND

VICTOR OTIENO CHIANDA 1ST RESPONDENT

JOASH ODHIAMBO JONYO 2ND RESPONDENT

RULING

1. In a Notice of motion dated 7th June 2024, the 2nd respondent/applicant through the firm of Omuthe and Company Advocates, has sought admission of his submissions out of time and that costs of the application be provided for.
2. The submissions are in regard to the applicant's application by way of Notice of Motion dated 14th November 2023 (The Motion) seeking, *inter alia*, to set aside this court's judgment delivered on 21st September 2023.
3. In response to the Motion, are grounds of opposition dated 20th January 2024 by the Appellant/ Respondent to the effect that this court is *functus officio* and devoid of jurisdiction over the Motion.
4. Notably, the application was duly served on the appellant/respondent via email ooadvocates@gmail.com as disclosed in an affidavit of service sworn on 10th July 2024 herein.
5. A fair opportunity to be heard is a fundamental principle justice as stated in *Halsbury's of England* 5th Edition 2010 Volume 61 paragraph 639; see also [James Kanyitta Nderitu-vs-Marios Philotas Ghikas and others](#) (2016) eKLR.
6. The respondents having been given an opportunity to respond to the application in the spirit of access and fair hearing, failed to reply to it; see [Ogada-vs-Mollin](#) (2009) KLR 620 and Articles 48 and 50 (1) of the [Constitution](#) of Kenya 2010.



7. It is therefore, my considered view that the application is unopposed, steadfast and meritorious.
8. Thus, the application partially succeeds regarding the admission of the applicant/2nd respondent's submissions out of time as stated in paragraph 1 hereinabove.
9. Costs of the application to abide the outcome of the Motion and the entire matter.
10. It is so ordered

DATED AND DELIVERED AT HOMA BAY THIS 11TH DAY OF JULY 2024,

G.M. A ONG'ONDO

JUDGE

