



**Rono v Chief Land Registrar & 5 others (Environment & Land Petition 13 of 2015 & Petition 14 of 2015 (Consolidated)) [2023] KEELC 19897 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19897 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION 13 OF 2015  
& PETITION 14 OF 2015 (CONSOLIDATED)  
EO OBAGA, J  
SEPTEMBER 19, 2023**

**BETWEEN**

**MOSES KIPTOO RONO ..... APPELLANT**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY LAND REGISTRAR, UASIN GISHU ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF SURVEY ..... 4<sup>TH</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**BEN MUNERIA WESONGA ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 24/3/2023 in which the 1<sup>st</sup> to 5<sup>th</sup> respondents/ applicants seek the following orders:-
  1. Spent
  2. Spent
  3. That the honorable court be pleased to set aside its orders granted on the March 22, 2023 dismissing our application dated December 16, 2022 for non attendance.
  4. That the application dated December 16, 2022 be reinstated and be heard to its final determination.



2. The Applicants' counsel contends that on 1/3/2023. She took directions regarding the Applicants' application dated 16/12/2022 which was then set down for hearing on 22/3/2023. Due to heavy work load she had on that day she forgot to diarize the date in the diary. She further states that on that day that is 22/3/2023. She had a matter before the Court of Appeal and this particular matter was not causerlisted. She annexed a causerlist showing that there were only three matters listed for that day and that this particular matter was not one of them.
3. The counsel states that failure to attend court was not deliberate and her mistake should not be visited upon her clients and that the application of 16/12/2022 should be heard on merits.
4. The applicants' application was opposed through a replying affidavit sworn on 28/3/2023. Counsel for the petitioner contends that the Applicants are looking for a way to delay the finalization of this matter and that actually the application which was dismissed was cause listed on 22/3/2023. The counsel depones that the date of 22/3/2023 was taken in the presence of counsel for the Applicant but come that date, neither the 1<sup>st</sup> to 5<sup>th</sup> applicants nor their advocate was in court. Counsel further states that the Applicant have not met the threshold for grant of the orders being sought.
5. The respondents' counsel blames the applicants' counsel for lack of diligence and states that litigation ought to come to an end and that in any case the matter was on the day's cause list and further that the applicants' are looking for all manner of excuses for their absence in court.
6. I have considered the applicants' application as well as the opposition to the same by the respondent. I have also considered the oral submissions by counsel for the parties during the hearing. The only issue for determination in this matter is whether the applicants have demonstrated that they deserve the court's discretion to set aside the court's orders of 22/3/2023.
7. The issue of whether to set aside orders dismissing a matter for non attendance is a matter of the court's discretion. The court's discretion ought to be exercised judiciously. In exercising this discretion, the court has to consider the reason for non-attendance among other considerations.
8. In the instant case, the counsel for the applicants has stated that she failed to attend court because she had failed to diarize the date in her diary. The reason for this is that she had a heavy workload on 1/3/2023 which made her forget to diarize the matter in her diary. She also explained that on 22/3/2023, the matter was not cause listed. She annexed a copy of cause list for that day which showed that there were only three matters before the court on that day and that this particular matter was not among them.
9. I take judicial notice of the fact that in almost all land matters the Land Registrar and Attorney General are parties. These two parties are always represented by state counsel. There is no doubt that the State Law Office has few counsel who are in the litigation Department. In most cases, these state counsel are overwhelmed as they have to attend to many cases. It is therefore possible that counsel may have forgotten to diarize this matter due to the heavy workload.
10. On the issue of there being two different cause lists for the same day, this is not uncommon. We have had cases where the court has a different cause list from what the Advocates have. Parties at times get cause list posted on the Kenya Law website which in most cases is different from the one the court has which is the final version. I therefore do not doubt the applicants' counsel who exhibited a different cause list from the one the court was using on the day the application dated 16/12/2022 was dismissed.
11. It is always fair that where it has been shown that non attendance was not deliberate, a party should be given an opportunity to be heard. It is on this basis that I find that the applicant's counsel has given a satisfactory explanation for her non attendance in court on 22/3/2023. Consequently, I allow the



application dated 16/5/2023 with the result that the orders of 22/3/2023 dismissing the applicants' application of 16/12/2022 are hereby set aside. The application dated 16/12/2022 is reinstated for hearing on merits. The costs of this application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19TH DAY OF SEPTEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**

**In the virtual presence of;**

**Ms. Odwa for Petitioners.**

**Ms. Chepkwony for Mr. Nyamweya for 6th Respondent.**

**Ms. Cheruiyot for 1st to 5th Respondents.**

**Court Assistant -Laban**

**E. O. OBAGA**

**JUDGE**

**19TH SEPTEMBER, 2023**

