



**Gitee & 11 others v Mbushiri (Environment & Land Case
864 of 2017) [2023] KEELC 20588 (KLR) (9 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20588 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 864 OF 2017**

**JG KEMEI, J
OCTOBER 9, 2023**

BETWEEN

- NJERI GITEE 1ST PLAINTIFF**
- PETER KIRIKA MWANIKI 2ND PLAINTIFF**
- GIBSON KAIRU GUCHU 3RD PLAINTIFF**
- JOHN KIBUIKA KIHUNGI 4TH PLAINTIFF**
- JAMES KIMEMIA GITHERI 5TH PLAINTIFF**
- FRANCIS GATHU KIMEMIA 6TH PLAINTIFF**
- EDWARD MWANGI NDUNGU 7TH PLAINTIFF**
- FRANCIS MUHORO MWANGI 8TH PLAINTIFF**
- JOAN MWIHAKI MBUGUA 9TH PLAINTIFF**
- CAROLINE WAMAITHA GITHINJI 10TH PLAINTIFF**
- LEAH KABURA KIMANI 11TH PLAINTIFF**
- JOHN NJOROGE WANJIKU (ON BEHALF OF BETHEL CHURCH ESTHER
KIBUI KURIA) 12TH PLAINTIFF**

AND

JOSEPH NDURA MBUSHIRI DEFENDANT

RULING

1. The applicant filed the notice of motion dated 7/7/2023 seeking the following orders:-
 - a. Spent.



- b. That this Honourable Court do hereby order reinstatement of the plaintiffs suit.
- c. Costs be in the cause.
- 2. The application is premised on the grounds annexed thereto and the supporting affidavit of David Mutunga, Counsel for the applicant sworn on 7/7/2023.
- 3. The deponent stated that when the matter came up for hearing on 12/5/2023 he was unwell and therefore unable to attend court. The treatment sheet was annexed in support.
- 4. The application is not opposed despite service.
- 5. When the application came for hearing on 9/10/2023 the respondent's counsel informed the court that she was not opposing the application subject to the court ordering throw away costs in favour of her client, a position that was vehemently objected to by Counsel of the applicant on grounds that the respondent despite service failed to file any pleadings. It was his argument that in the circumstances the respondent does not deserve any throw away costs.
- 6. Having considered the application, the affidavit evidence, the oral arguments, the court makes the following findings: the application is unopposed despite service; the application was made without delay and the applicant has sufficiently explained the reasons for his absence in court to the satisfaction of the court; the respondent has not shown any prejudice he stands to suffer if the case is heard on merits.
- 7. For the above reasons the application is allowed. Consequently, the suit be and is hereby reinstated for hearing.
- 8. I make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9TH DAY OF OCTOBER, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

