



**Some v Kakonge; Meme & 2 others (Third party) (Environment & Land Case 280 of 2017) [2023] KEELC 21528 (KLR) (14 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21528 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 280 OF 2017  
MN GICHERU, J  
NOVEMBER 14, 2023**

**BETWEEN**

**ESTHER NYAKIO SOME ..... PLAINTIFF**

**AND**

**JOHN OTACHI KAKONGE ..... DEFENDANT**

**AND**

**SUSAN KINYA MEME ..... THIRD PARTY**

**THE DIRECTOR OF SURVEYS ..... THIRD PARTY**

**DISTRICT LAND REGISTRAR, KAJIADO NORTH LAND  
REGISTRY ..... THIRD PARTY**

**RULING**

1. This ruling is on the Notice of Motion dated June 30, 2023. The motion which is by the plaintiff is brought under orders 9 rules 8, 9 and 10, 12 rule 7 and 45 rule 1 of the *Civil Procedure Rules*. It seeks the following orders.
2. Plaintiff be allowed to act in person.
3. Setting aside of the proceedings of April 25, 2023 and vacate the judgment date set for November 9, 2023.
4. Plaintiff be allowed to prosecute the case against the defendant.
2. The motion is supported by seven grounds and an Affidavit by the applicant dated June 30, 2023. In a nutshell, the plaintiff is saying that when the case proceeded on April 25, 2023 in her absence, she was not aware because she had lost contact with her counsel due to the great financial challenges that she was facing and continues to face.



Secondly, she lives on the suit land with her children and grandchildren and she has no other home. Her late husband is also buried on the land. She therefore craves to be heard.

3. The motion is opposed by the defendant who has sworn a replying affidavit dated September 11, 2023 which has four annexures. The gist of the reply is that the plaintiff has not given sufficient reasons as to why she failed to attend court on April 25, 2023 and that she has shown great reluctance in prosecuting this suit since she filed it in the year 2017. He therefore prays that the motion by the plaintiff be dismissed.
4. I have carefully considered the motion in its entirety including the affidavits, grounds, annexures and the entire record. I find that it is fair and just to allow the motion for the following reasons.
  1. Firstly, the plaintiff has given a plausible reason as to why she failed to appear in court on the date that the case proceeded. The reason is that she fell out with her counsel on account of her lack of money. This deposition has not been controverted by the defendant.
  2. Secondly, the plaintiff deposes that she is in occupation of the suit land and she prays that she be heard. I find that since that failure to attend court on the hearing date was not deliberate, the plaintiff should not be condemned unheard.
  3. Finally, the defendant has nothing to lose because he will be at liberty to cross-examine the plaintiff and her witnesses when they testify. It will not be fair or just to fail to hear the plaintiff in this case.

For the above stated reasons, I allow the Notice of Motion dated June 30, 2023. Costs in the cause.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**M.N. GICHERU**

**JUDGE**

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