



REPUBLIC OF KENYA



**Nduati v Muchene & 3 others (Environment & Land Case
203 of 2014) [2022] KEELC 3361 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 203 OF 2014**

LC KOMINGOI, J

MAY 5, 2022

BETWEEN

FLORENCE NJOKI NDUATI PLAINTIFF

AND

MOSES MUKURIA MUCHENE 1ST DEFENDANT

MICHAEL KONGO NGUGI 2ND DEFENDANT

SIMON MUKUNDI KARIUKI 3RD DEFENDANT

CHRISTOPHER RICKY KIMANI KARITHI 4TH DEFENDANT

RULING

1. This is a notice of motion dated 7th December 2021 brought under sections 1A, 1B and 3A of the [Civil Procedure Act](#) and order 51 rule 1 of the [Civil Procedure Rules](#).
2. It seeks orders:-
 1. Spent.
 2. That the honourable court be pleased to set aside its order given on the 15th November 2021 dismissing the Plaintiff's suit for want of prosecution.
 3. That the order to serve the 3rd and 4th Defendants through advertisement in the press be reinstated and extended.
 4. That upon setting aside the order of dismissal of the plaint for want of prosecution, the honourable court be pleased to accept the Plaintiff's explanation given in the supporting affidavit why the suit should not be dismissed for want of prosecution and allow the Plaintiff to further prosecute her suit.



5. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (g).
4. The application is supported by the affidavit sworn by Leo Masore Nyang'au, advocate for the Plaintiff/Applicant on the 7th December 2021.
5. The Application is opposed. There are grounds of opposition filed on behalf of the 1st Defendant/Respondent dated 4th February 2022.
6. The application was canvassed by oral submissions on the 10th February 2022.
7. I have considered the notice of motion and the affidavit in support. I have also considered the grounds of opposition and the rival submissions. The issue for determination is whether this application is merited.
8. I have gone through the court record. On the 24th March 2015, honourable Mutungi J granted the following orders:-

“The court grants the Plaintiff leave to effect service upon the 2nd, 3rd and 4th Defendants by way of advertisement on the Daily Nation Newspaper during a weekday. The Defendants to be required to appear within 15 days from the date of the newspaper publication.....”
9. On the 14th July 2015, the learned Judge granted the following orders:-

“The period to effect service by substituted service is extended by a further 60 days from today. Mention of the matter on 1st October 2015 for further directions”.
10. From this time on the Plaintiff went into a slumber and was jostled into action by a notice to show cause as to why the suit should not be dismissed for want of prosecution. The same came up on 29th September 2021. Mr. Masore appeared and sought more time to serve the 2nd -4th Defendants. This honourable court extended the time within which to serve the 2nd to 4th Defendants. It also extended the notice to show cause to 15th November 2021.
11. On the 15th November 2021 there was no appearance by the Plaintiff or her counsel and the suit dismissed for want of prosecution.
12. I have given this chronology of events to demonstrate that the Plaintiff has lost interest in the suit. It is over eight (8) years since this suit was filed yet the 2nd, 3rd and 4th Defendants have not been served.
13. The 1st defendant is greatly prejudiced by the pendency of this suit.
14. I find that no sufficient cause has been demonstrated to warrant this court to review and/or set aside the orders of 15th November 2021.
15. In conclusion, I find no merit in this application and the same is dismissed with costs to the 1st Defendant/Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 5TH DAY OF MAY 2022.

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L. KOMINGOI



JUDGE

In the presence of:-

Mr. Masore Nyang'au for the Plaintiff

Mr. Wachira for the 1st Defendant

Steve - Court Assistant

