



REPUBLIC OF KENYA



**Lake Basin Development Authority v Registered Trustees of the Agricultural Society of Kenya (ASK); County Government of Bungoma (Interested Party) (Environment & Land Case 46 of 2019) [2025] KEELC 81 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 81 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 46 OF 2019**

**E ASATI, J**

**JANUARY 23, 2025**

**IN THE MATTER OF: BUNGOMA MUNICIPALITY PLOT  
MEASURING 13.4HA NEXT TO SANGALO INSTITUTE**

**AND**

**IN THE MATTER OF: LETTER OF ALLOTMENT DATED  
23/11/2016 FROM THE NATIONAL LAND COMMISSION**

**BETWEEN**

**LAKE BASIN DEVELOPMENT AUTHORITY ..... PLAINTIFF**

**AND**

**THE REGISTERED TRUSTEES OF THE AGRICULTURAL SOCIETY OF  
KENYA (ASK) ..... DEFENDANT**

**AND**

**THE COUNTY GOVERNMENT OF BUNGOMA ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 26<sup>th</sup> September 2024 brought by the plaintiff pursuant to the provisions of section 3A of the *Civil Procedure Act* and Order 50 Rule 1 of the Civil Procedure Rules 2010.
2. The application seeks for orders that the order for the dismissal of the Plaintiff's suit issued on 23<sup>rd</sup> September 2024 for non-attendance be set aside and quashed. That the suit be reinstated and be heard on merit. That interim orders issued on 29<sup>th</sup> April 2020 be equally reinstated.



3. The application is based on the grounds that non-attendance by the Plaintiff's Counsel on the material day was not intentional and that failure to address court was due to failure of technology which was not anticipated. That it is in the interest of justice that the application be allowed. That there exist orders of injunction and that their dismissal will cause the plaintiff harm.
4. The application was supported by the averments in the Supporting Affidavit of Silvia Kwamboka, Advocate sworn on 26<sup>th</sup> September 2024.
5. The application was opposed by the Defendant vide the grounds contained in the Replying Affidavit of Caren Jaguga sworn on 15<sup>th</sup> November 2024. The case of the Defendant is that the reasons given by the applicant are not sufficient to warrant reinstatement of the suit. That it is inconceivable that Counsel for the applicant would address the court in other matters and not inform the court that she had the instant matter coming up for hearing especially noting that this suit was called out first on the day's cause list. That the plaintiff was not ready to proceed with the matter and that the court was justified to dismiss it for non-attendance.
6. That the mandatory injunction orders of 29<sup>th</sup> April 2020 were already enforced because they required the Defendant to remove its property from the suit land which the defendant already did. That under Order 40 Rule 6 of the Civil Procedure Rules, the orders already lapsed at the expiry of 12 months from the date of issue. That reinstating the suit and the orders would prejudice the Defendant.
7. The application was also opposed by the Interested Party on the grounds contained in the Replying Affidavit of Abraham Alubala Advocate sworn on 15<sup>th</sup> October 2024. The case of the Interested Party is that the application lacks merit. That whereas failure of technology is excusable in certain circumstances, this case is not one of them. That it is now close to 4 years since the orders sought to be reinstated were granted and that the plaintiff's lack of seriousness in prosecuting the suit is prejudicial to the Interested Party. That in the alternative, the court may award throw away costs to the Respondent and the Interested Party and have the applicant prosecute the suit expeditiously.
8. The application was urged orally on 20<sup>th</sup> November 2024. Counsel for the applicant urged the court to allow the application and reinstate the suit and the orders made on 29<sup>th</sup> April 2020.
9. Counsel for the Defendant submitted that reinstatement of the orders means that the court is hearing the matter afresh. That the subsisting circumstances as at the time the suit was filed and now have changed. Counsel did not object to reinstatement of the suit but objected to reinstatement of the orders.
10. On behalf of the Interested Party Counsel opposed reinstatement of the orders.
11. I have considered the application, the Replying Affidavits and the submissions. The court record shows that on 23<sup>rd</sup> of September 2024 when the dismissal order was made, the matter was coming up for hearing of the main suit. That when the matter was called out in the first instance, only Mr. Ligami Counsel for the Defendant was present. There was no attendance by the Plaintiff. The matter was given a time allocation of 11a.m. for hearing. The record shows further that the matter was called out at 11:20 am and still the Plaintiff was not represented. The suit was therefore dismissed for want of prosecution. The hearing date had been taken in the presence of Counsel for the plaintiff.
12. Though both the Defendant and the Interested Party opposed the application vide their respect Replying Affidavits, both indicated in their submissions that they were amenable to reinstatement of the suit but not the temporary orders dated 29<sup>th</sup> April 2020.



13. The court record shows that the orders dated 29/4/2020 were a mandatory order of injunction compelling the Defendant to remove its property from the suit land and an order of temporary injunction restraining the Respondents from any activities/continued trespass over the suit land pending hearing and determination of the suit. Although it was submitted that where a suit in respect of which an interlocutory injunction has been granted is not determined within twelve months from the date of the grant, the injunction shall lapse, the law allows the court, for sufficient reason, to order otherwise. Looking at the history of the matter, blame for delay in prosecution of the same after the orders were issued does not lie entirely on the plaintiff. All the parties have contributed to the delay. It is in the interest of justice that the status quo prevailing as at 23/9/2024 be maintained pending disposal of the suit.
14. In the circumstances, the court finds that the application has merit and allows it as follows:
- i. The court order made on 23/9/2024 dismissing the suit is hereby vacated and the suit reinstated.
  - ii. The order of temporary injunction as per the second limb of the court order dated 29/4/2020 is reinstated.
  - iii. Thrown away costs of Kshs15,000/= each are awarded to the Defendant and the Interested Party.
  - iv. The Plaintiff to expedite the hearing and disposal of the suit.

Orders accordingly.

**RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 23RD JANUARY, 2025  
VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Nyambeki for the Plaintiff/Applicant.

Willy h/b for Ligami for the Defendant/Respondent.

No appearance for the Interested Party.

