



**Omweri v Tukero & another (Environment & Land Case  
6 of 2023) [2025] KEELC 3923 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3923 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE 6 OF 2023**

**MN MWANYALE, J**

**MAY 15, 2025**

**BETWEEN**

**JOSHUA MWEMBI OMWERI ..... PLAINTIFF**

**AND**

**PETER TUKERO ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, TRANSMARA WEST ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Upon consideration of the Application dated 31.12.2024 seeking setting aside of the orders issued on 19.12.2024 dismissing the suit for want of prosecution which application is premised on the grounds that the plaintiff was present in court with three witnesses and that this counsel Mr. Ombachi was absent but his brief was held by Mr. Migiro Advocate, and the absence of Mr. Ombachi was due to the fact that he was bereaved, and the parties were not called out.
2. Upon further consideration of the affidavit in support of the application and the annexures thereto including the proceedings of the said date and a funeral programme in respect of the late Amos Michieka showing that the cortege left the Lenmek mortuary on 19.12.2024, as well as a letter dated 11.12.2024 communicating the bereavement of Mr. Ombachi Advocate
3. Upon consideration of the grounds of opposition by the 1<sup>st</sup> Respondent, and the submissions by the parties together with the authorities cited in support and in opposition to the application.
4. The court considers the issue for determination, is whether or not the application is merited.
5. The Applicant having deponed on the reasons for not proceeding with the matter on the dated to matter was slated for hearing, the Respondent has not challenged the depositions by way of a Replying affidavit by filed grounds of opposition.



6. The depositions are not challenged and the court finds that the Applicant Advocate was indeed bereaved and had communicated the bereavement early to his counterparts, and that on the hearing date, the Applicant was involved in the burial programme, the court is convinced that the Applicant has made out as strong case for the court to review its orders dismissing this suit, as the mistakes of Advocates ought not to be visited the litigant, who in this case was said to be present in court.
7. Accordingly, the orders issued on 19.12.2024 are hereby set aside and this suit is reinstated for hearing.
8. Directions on the pre-trial conference shall be issued on 4<sup>th</sup> June 2025.
9. Costs in the cause.

**DATED AT KILGORIS THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia

Mr. Ombachi for the Applicant/ Applicant

N/a for Mr. Onchwangi for the 1<sup>st</sup> Respondent.

Mr. Wabwire for the 2<sup>nd</sup> Respondent.

