



Rono & another v Nyambane & 6 others (Environment & Land Case E058 of 2021) [2025] KEELC 125 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELC 125 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E058 OF 2021**

**EO OBAGA, J
JANUARY 23, 2025**

BETWEEN

DANIEL KIPKOSGEI RONO & ANOTHER PLAINTIFF

AND

WILLIAM NYAMBANE & 6 OTHERS DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 15th May, 2024 in which the 5th and 7th Defendants/Applicants (Applicants) are seeking the following orders:
 - a. Spent
 - b. Pending the hearing interpartes and the determination of the application there be stay of proceedings of hearing of the suit.
 - c. The exparte default proceedings whereby the court proceeded exparte be set aside.
 - d. The 5th and 7th Defendants be allowed to file their defence(s) and compliance documents.
2. The Applicants contend that they were not served with summons to enter appearance and that they never instructed the firm of Rioba Omboto and Company advocates to act for them. They state that they became aware of this case when they were served with a hearing notice setting down the case for 28th May, 2024. They therefore plead for an opportunity to file their defence and compliance documents.
3. The Applicants further contend that they were not served with the application to cease acting for them and that the application was discovered by their advocates upon perusal of the court file. The Applicants state that the only document which was served upon them is hearing notice dated 22nd January, 2024 which set down the case for hearing on 28th May, 2024.



4. The Applicants' application was opposed by the Plaintiffs/Respondents based on a replying affidavit sworn on 3rd June, 2024. The Respondents state that they served summons to enter appearance upon all the Defendants who appointed a lawyer who entered appearance and filed defence for all of them. When the case was scheduled for hearing, the Defendants' advocate was present and the Plaintiffs' case was heard and they closed their case.
5. When it came to the turn for the Defendants to testify, their advocate filed an application to cease acting which application was allowed. The Respondents contend that the Applicants cannot claim that they were not represented when the record clearly shows that they were represented. The Respondents deny that there were ex parte proceedings in this matter and that this application is only meant to delay the finalization of this matter.
6. The Applicants filed their submissions dated 29th November, 2024. They submitted that they did not instruct the firm of Rioba Omboto & Co. Advocates and therefore their representation by the firm is null and void. They submitted that Rioba Omboto & Co. Advocates had confirmed in their letter of 14th June, 2024 that he was not representing the Applicants.
7. The Applicants also submitted that they were not served with summons to enter appearance. On the issue of instructions, they relied on the case of Wilfred N. Konosi & Co. Advocates -Vs- Flamco Limited (2017) eKLR. On the issue of service of summons to enter appearance, they relied on the case of Bourchard International (services) Ltd -Vs- M'Mwereria (1987) KLR 193.
8. The Respondents filed their submissions dated 28th November, 2024. They submitted that the Applicants' then Lawyer confirmed in a letter that he had instructions to represent all of them. They further submitted that if indeed the Applicants had not instructed the firm of Rioba Omboto to represent them, they ought to have informed the court.
9. The Respondents further submitted that the Applicants filed a joint statement of defence and they cannot again be given another opportunity to file another defence.
10. I have carefully gone through the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The first issue for determination is whether there were ex parte proceedings capable of being set aside. The second issue is whether the Applicants were represented and whether they were given opportunity to file compliance documents.
11. To address the first issue, it is necessary to give a brief background of this case. The Respondents are the registered owners of the suit property that is Eldoret Municipality Block 15/1889. The Defendants moved into the suit property and put up mud walled and mabati structures. When the Respondents asked them to move out, they refused to do so. The Respondents were forced to file this suit for among other prayers eviction.
12. The Defendants were served with summons and they entered appearance and filed a defence in which they claimed that they had acquired the suit property by way of adverse possession.
13. The suit was set down for pre-trial. The case was mentioned at least twice before the Deputy Registrar. On 6th July, 2022 the advocate for the Plaintiffs was present before the Deputy Registrar when directions were given to the parties to comply. The file was referred to the Judge for purposes of fixing a hearing date. On 27th September, 2022 the Plaintiffs advocate was given a hearing date for 1st February, 2023 and the court directed that hearing notice do issue.
14. On 1st February, 2023, the case came up for hearing. The Defendants' counsel applied for adjournment but the application was rejected. The hearing proceeded in the presence of the Defendants' counsel.



The Plaintiffs closed their case. The Defendants were given a date for defence hearing. The Defendants' counsel indicated that there was a possibility of settling the matter. The case was set for defence hearing on 13th July 2023.

15. On 13th July, 2023, the Defendants' counsel indicated to court that their clients were ready to settle the matter. The case was adjourned to 21st November, 2023. On 21st November, 2023, the counsel for Defendants applied for adjournment on the ground that she could not reach her clients. She indicated that she was going to file an application to cease acting for them.
16. The court granted adjournment and directed that the application to cease acting was to be filed and the same was allocated 29th November, 2023 for hearing. On 29th November, 2023, the counsel for Defendants indicated that she had not served the Defendants. The application was adjourned to 18th December, 2023. On 18th December, 2023, there was no appearance. The court adjourned the application to 19th January, 2024 and the court process server was directed to serve hearing notice.
17. On 19th January, 2024, the Defendants' counsel were not present to prosecute their application. The application to cease acting was allowed and a date for hearing fixed on 16th May, 2024. The Plaintiff counsel was directed to serve hearing notice upon the Defendants personally. On 16th October, 2024, neither party attended court for hearing. The case was adjourned to 16th October, 2024 for hearing. The court process server was directed to serve.
18. On 16th October, 2024, Mr. Momanyi appeared for 5th and 7th Respondents and informed the court that he had filed the present application. It is at this time that the court gave directions as to the disposal of the application.
19. From the above background, it is clear that there were no *ex parte* proceedings capable of being set aside. The Defendants' counsel fully participated and cross examined the Plaintiff who testified. The Plaintiffs' case was closed and the defence given opportunity to urge their defence.
20. On the second issue, it is clear that the firm of Rioba Omboto & Co. Advocates appeared for all the Defendants. The instructions to represent the Defendants were given by the 1st, 2nd and 4th Defendants. The firm of Rioba Omboto & Co. Advocates in their letter of 14th June, 2024 were categorical that they had instructions to appear for all the Defendants. They did not state that they had no instructions to represent the 5th and 7th Defendant who are the Applicants in this case.
21. All the Defendants are on the suit property. They were all served with summons. They sent three of them to instruct a lawyer who entered appearance and filed a defence for them. They cannot now turn around and claim that they were not aware of the suit until they were served with a hearing notice for 28th May, 2024.
22. It is clear that the Applicants are seeking to delay the finalization of this case as they are the ones in occupation and would not want to see an end to this case. I find no merit in the Applicants' application which is dismissed with costs to the Respondents.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS
23RD DAY OF JANUARY, 2025.**



In The Presence Of:

Ms. Isiekei for Plaintiffs/Respondents

Court assistant Steve Musyoki

