Ruga (Suing as the Personal Representative of the Estate of Ruga Gituku - Deceased) v Sironka & 4 others (Environment and Land Case E007 of 2020) [2025] KEELC 6412 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6412 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENT AND LAND CASE E007 OF 2020

MD MWANGI, J

SEPTEMBER 25, 2025

BETWEEN

JOYCE WANGECHI RUGA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF RUGA GITUKU - DECEASED) .... PLAINTIFF

AND

PHILIP OLE SIRONKA .... 1ST DEFENDANT

HANNAH GATHONI RUGA .... 2ND DEFENDANT

MWENDA THURANIRA T/A MY SPACE PROPERTIES .... 3RD DEFENDANT

CHIEF LAND REGISTRAR, KAJIADO .... 4TH DEFENDANT

CHAIR PERSON ISINYA SUBCOUNTY, LAND CONTROL BOARD .... 5TH DEFENDANT

RULING

Introduction

1. Before this court for determination is the Plaintiff's Notice of Motion dated 2nd July 2024 in which the Plaintiff seeks orders to reinstate the suit, which was dismissed on account of non-attendance of counsel.

2. The application is supported by the affidavit of Tony Towett, counsel for the Plaintiff, who avers that the hearing date was fixed ex parte on 9th April 2024 without service of a hearing notice on the Plaintiff or her advocates. He attributes the non-attendance to an internal administrative lapse following the departure of a colleague from the law firm representing the Plaintiff, which resulted in the hearing date not being diarized or communicated. The Plaintiff contends that the statutory one-year inactivity

period under Order 17 Rule 2 had not lapsed, that no notice to show cause was issued before dismissal, and that the striking out violated the Plaintiff's constitutional right to a fair hearing.

3. It is the applicant's assertion that the mistake of counsel should not be visited upon the litigant, that reinstatement will not prejudice the Defendants, and that the matter involves substantial acreage of land warranting determination on its merits.

4. In response to the application, the 1st Defendant filed a Replying Affidavit opposing the same on the grounds that the Plaintiff had failed to establish any sufficient cause to warrant the reinstatement of the suit, which had been dismissed on 6th May 2024 for non-attendance. It was deposed that the dismissal followed repeated failures by the Plaintiff to take the necessary steps to prosecute the matter despite having been accorded ample opportunity and clear directions by the Court. The 1st Defendant contended that such conduct demonstrated a lack of diligence on the part of the Plaintiff in the prosecution of the suit.

5. The 1st Defendant averred that the reasons advanced for the Plaintiff's absence on the date the matter was dismissed were neither credible nor substantiated by any cogent documentary evidence. It was maintained that the Plaintiff had not provided any satisfactory explanation for her prolonged inaction prior to the dismissal, and that the present application was merely an afterthought calculated to frustrate the expeditious disposal of the dispute. The Defendant further asserted that litigation must come to an end, and that the Court should be slow to exercise its discretion in favour of a litigant who has exhibited indolence.

6. It was further deposed that the 1st Defendant has since been subjected to unnecessary expense and prejudice occasioned by the Plaintiff's delay in bringing the matter to a conclusion. The Defendant maintained that reopening the suit at this stage would not only occasion further costs but also undermine the principle of finality in litigation, to which both parties are entitled. It was emphasized that the Court's resources ought to be protected from being expended on matters where a party has shown unwillingness to prosecute their case.

7. In conclusion, the 1st Defendant urged the Court to dismiss the application with costs, contending that the Plaintiff had failed to meet the threshold for setting aside a dismissal order or for reinstatement of a suit. The Defendant maintained that no miscarriage of justice would result from declining the application, whereas allowing it would reward dilatory conduct and cause further prejudice to the Defendant.

8. The 2nd Defendant, Hannah Gathoni Ruga, opposes the Plaintiff's Notice of Motion dated 2nd July 2024, contending that the suit, filed on 22nd October 2020, was dismissed on 6th May 2024 for non-attendance pursuant to Order 17 Rule 3 and Order 12 Rule 3 of the Civil Procedure Rules, following several instances of the Plaintiff's advocates' failure to attend court despite service of hearing notices. She avers that the Plaintiff's counsel's failure to update their shared diary or include the matter in the handing-over report does not constitute sufficient cause for reinstatement, and that the statutory timelines argument is misconceived.

9. The 2nd Defendant maintains that she has been, on her part diligent and compliant with court's directions, and that reinstatement would occasion undue prejudice, prolong litigation, and increase costs contrary to the principles that litigation must come to an end and equity aids the vigilant, not the indolent. She avers that the application is premised on a misleading narrative and ought to be dismissed with costs.

10. The Court record reflects that during the hearing of the application on 5th June 2025, the Plaintiff, the 1st Defendant, and the Interested Party made oral submissions, while the 2nd Defendant elected

to proceed by way of written submissions. The 4th and 5th Defendants did not participate in the proceedings. The court has considered both the written and oral submissions in the writing of this ruling.

Issues for Determination

11. The following issues arise for determination upon critical examination of the Plaintiff's application as well as responses by the Respondents:

    i. Whether the Plaintiff/Applicant has established sufficient cause to justify the reinstatement of the suit.

    ii. Whether the Plaintiff/Applicant, as one of the joint administrators of the estate, possessed the requisite legal capacity to institute and prosecute the application.

    iii. Who should bear the costs of the application.

Analysis and Determination

I. Whether the Plaintiff/Applicant has established sufficient cause to justify the reinstatement of the suit.

12. Order 12 Rule 7 of the Civil Procedure Rules provides that:

> " Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just."

13. In CFC Stanbic Bank Ltd v John Maina Githaiga & Another [2013] eKLR, the court observed that:

> " It is trite law that a mistake of counsel should not be visited upon his client unless the client himself is guilty of the mistake or has contributed thereto."

14. Similarly, in Evans Kidero & 4 Others v Ferdinand Ndung'u Waititu & 4 Others [2014] eKLR, the Supreme Court stated that:

> " The Court has a duty, in the exercise of its discretion, to ensure that litigants are not shut out from the seat of justice, and that the doors of justice remain open unless it is demonstrably clear that a party has deliberately sought to obstruct or delay the course of justice."

15. The record shows that the suit was dismissed for non-attendance on a date that had been fixed by consent. The Applicant explains the failure to attend was as a result of the inadvertence of counsel, and argues that the Court ought to have issued a notice to show cause before dismissal.

16. While the law under Order 12 Rule 7 does not make such notice a prerequisite, the Applicant's case is that the non-attendance was neither willful nor intended to obstruct the cause of justice.

17. The 1st Defendant maintains that the Applicant has been indolent and failed to diligently prosecute the suit, and thus does not deserve the exercise of the Court's discretion in his favour. The Interested Party's position is that while the reinstatement is not expressly opposed, the dispute touches on substantive ownership questions beyond the present application.

18. The Court observes that the delay between the date of dismissal and the date of filing of the instant application is not inordinate, and the reasons given, though bordering on negligence, fall within the permissible margin of "sufficient cause" under Order 12 Rule 7. As was said by Madan, J.A. (as he then

was) in Belinda Murai and Nine Others v. Amos Wainaina in Civil Application No. Nai 9 of 1978 (unreported):-

> "A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed by senior counsel though in the case of a junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistakes which is politely referred to as erring, in their interpretation of laws and adoption of a legal point of view which courts of appeal sometimes overrule

19. There is no demonstration of prejudice to the Defendants that cannot be compensated by an award of thrown-away costs. In line with Article 50(1) of the *Constitution*, which guarantees every person the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, this Court is inclined to allow reinstatement so that the matter may be determined on its merits.

II. Whether the Plaintiff/Applicant, as one of the joint administrators of the estate, possessed the requisite legal capacity to institute and prosecute the application.

20. The *Law of Succession Act*, Cap 160, is clear that the powers and duties of personal representatives are vested jointly in all administrators where there are several administrators. Section 79 provides:

> "The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative."

Rule 14 of the Fifth Schedule provides:

> "Where there are several executors or administrators, they shall all join and act together in the administration of the estate unless otherwise directed by the grant of representation."

21. The Court of Appeal in Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another [1987] eKLR, restated this principle:

> "...where there is more than one administrator they must all act together unless the grant otherwise directs."

22. However, the law does not demand that an administrator who is acting against the estate's interests must be joined in or consent to proceedings that seek to protect the estate from his or her conduct. In Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, Musyoka J. held:

> "The general rule is that where there are several administrators, they should act together. However, the law does not require that all administrators should be physically present in all transactions or proceedings concerning the estate. One administrator may transact or act alone with the authority, express or implied, of the others, or where the circumstances make

it impossible or impracticable to act jointly, such as where a co-administrator's interest is in conflict with that of the estate."

23. Similarly, in Re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR, the court recognized that:

> "Where a co-administrator is opposed to the proceedings or is himself the subject of the complaint, the law will not compel the other administrators to seek his concurrence. The proper course is to move the court for appropriate relief to protect the estate."

24. In the present case, the co-administrator is the 2nd Defendant, against whom allegations have been made that her conduct is inimical to the estate's interests. To insist on her written authority before moving the court to protect the interests of the estate would be to permit a potential wrongdoer to veto measures aimed at preservation of the estate.

25. Given the apparent conflict of interests, the Applicant was entitled to act alone in bringing this application, as the joinder or concurrence of the 2nd Defendant would not only be impractical but contrary to the estate's best interests. The proper safeguard lies in the court's supervisory jurisdiction over personal representatives to ensure their actions—whether singly or jointly—remain accountable to the beneficiaries of the estate and the law.

26. Therefore, while joint administrators are generally required to act together, where one administrator's interests are adverse to the estate, the other may act alone to protect the estate's property and interests, subject to the court's oversight. The present application therefore cannot be defeated merely for want of written authority from the 2nd Defendant.

III. Who should bear the costs of the application.

27. The general principle under Section 27(1) of the *Civil Procedure Act*, Cap 21 Laws of Kenya, is that costs follow the event, and the successful party should ordinarily be awarded costs, unless the court, for good reason, orders otherwise.

28. In the present case, although the Plaintiff/Applicant has substantially succeeded, the 1st Defendant/Respondent has been put to inconvenience and expense in defending the application and having proceeded partly with the suit. Further, the Applicant has expressed willingness to pay thrown away costs. In the circumstances, justice would be served by ordering that the Plaintiff/Applicant shall bear the reasonable thrown away costs occasioned by the application assessed at Kshs. 20,000/=, payable to the 1st Defendant/Respondent, while each of the other parties shall bear their own costs.

29. By dint of the foregoing analysis, the Court makes the following orders:

    a. The suit herein is reinstated and shall proceed to hearing on its merits.

    b. The Plaintiff/Applicant is directed to take immediate steps towards compliance with pre-trial requirements within thirty (30) days from the date hereof, failing which the suit shall stand dismissed.

    c. The Plaintiff/Applicant shall pay the 1st Defendant/Respondent thrown away costs assessed at Kshs. 20,000/- within thirty (30) days from the date hereof.

    d. Each of the remaining parties shall bear their own costs of this application.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Kioko for the 2nd Defendant

Ms. Muthoni h/b for Ms. Asli Osman for the Plaintiff/Applicant

Mr. Kipkirui for the 1st Defendant/Applicant

N/A for the 3rd, 4th and 5th Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE