



**County Government of Kisii v Tengenya & 2 others (Environment and Land
Miscellaneous Case E021 of 2024) [2025] KEELC 6676 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6676 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND MISCELLANEOUS CASE E021 OF 2024**

M SILA, J

OCTOBER 2, 2025

BETWEEN

COUNTY GOVERNMENT OF KISII APPLICANT

AND

ELIJAH KIBAGENDI TENGENYA 1ST RESPONDENT

JAMES OBARA ONDARI 2ND RESPONDENT

JAMES MIRUKA ONYANCHA 3RD RESPONDENT

RULING

1. The application before me is that dated 14 May 2025 which is filed by the applicant in this miscellaneous motion. The application seeks orders to reinstate the application dated 24 July 2024 which was dismissed on 30 January 2025 for non-attendance and failure to prosecute. The application is opposed by the 1st respondent.
2. To put matters into context, the applicant filed the application dated 24 July 2024 as a miscellaneous application seeking orders to enlarge time for filing an appeal against a ruling delivered on 16 January 2024 by the Ogembo Magistrate's Court in the suit *Ogembo SRMELC No. 48 of 2019*. From the limited material before me, the subject matter in that suit is a Plot No. 23 in Ogembo Town. I see that the suit before the Ogembo court proceeded ex parte culminating in a judgment delivered on 28 September 2023. The applicant filed an application dated 8 November 2023 to set aside the judgment and that application was dismissed in the ruling of 16 January 2024. That is what led to the filing of the miscellaneous application dated 24 July 2024.
3. The application came before me on 9 December 2024 for directions. Mr. Mokaya, learned counsel for the applicant was present and the date of 30 January 2025 was given for inter partes hearing of that application, with direction that counsel serves the hearing notice. On 30 January 2025, Mr. Mokaya did not appear in court and neither was counsel for the respondent present though it is not clear if he



was ever served. Given that I had given the date in the presence of Mr. Mokaya, I proceeded to dismiss the application for failure to prosecute.

4. Nothing happened from 30 January 2025 until this application was filed on 14 May 2025. I have mentioned that the application seeks a reinstatement of the application dated 24 July 2024 that was dismissed on 31 January 2025. The supporting affidavit is sworn by Mr. Mokaya John Momanyi, who states that he works for the applicant. He is also the counsel attending to the matter. He has averred that failure to attend court on 30 January 2025 was because the matter was mis-diarised for 31 January 2025.
5. The 1st respondent has filed a replying affidavit to oppose the motion. He has deposed that no effort was made for more than 3 months to reinstate the dismissed application. He has further deposed that counsel cannot feign ignorance of this matter being in court on 30 January 2025 since they had another matter before this court i.e *Kisii ELC Petition No. E002 of 2024* on the same day. He has added that it is also not demonstrated that any hearing notice for 31 January 2025 was ever served to support the allegation that the matter had been mis-diarised for 31 January 2025. He believes that the applicant is tainted with dirty hands. He contends that the applicant was given an opportunity to be heard which he squandered.
6. The 2nd and 3rd respondents do not oppose the motion.
7. I have given the motion due consideration. It is one for reinstatement of a dismissed application. It is correct that the date of 30 January 2025 was taken by Mr. Mokaya. He did not appear in court on that day. The explanation given is that the matter was mis-diarised for 31 January 2025. I am not convinced by this explanation. If indeed the matter was truly mis-diarised for 31 January 2025, then you would expect that the respondents be served with a hearing notice for 31 January 2025 but there is no such hearing notice annexed. You would also expect that an application to reinstate would be filed on that 31 January 2025 or very soon thereafter. This application was filed more than 3 months later.
8. In his submissions, Mr. Mokaya tried to explain that in the County Attorney's office at Kisii, no application can be filed without the approval of the County Attorney and that the County Attorney was away all that time until May. Again, I am afraid I do not believe such an explanation, and in any event it was never put in the supporting affidavit so that it can be subjected to interrogation. It is improper to allege such a reason at the submissions stage.
9. My own view of the matter is that counsel simply neglected his duties. He failed to serve a hearing notice for 30 January 2025 and also failed to appear in court on 30 January 2025 to prosecute the application dated 24 July 2025. Whether counsel thought that the matter was for 30 January 2025 or 31 January 2025, he had a duty to serve a hearing notice. The failure to serve any hearing notice convinces me that this was a case of neglect of duty on the part of Mr. Mokaya. Even filing the application, three months thereafter, further demonstrates the neglect. You would expect better from a public servant serving a public institution.
10. If this was not a matter that involves the public, given that the applicant is a public entity claiming land which it believes to be public land, I would have proceeded to dismiss this application. I however do not think that the applicant should bear the brunt of the lax and derelict manner that her counsel has conducted this matter. It is for that reason only that I allow this application and not the dubious and implausible reasons that Mr. Mokaya has presented before me.
11. I am convinced that the 1st respondent was within his rights to oppose this motion. Thus, despite me allowing the application, the costs thereof will be to the 1st respondent.
12. Orders accordingly.



DATED AND DELIVERED THIS 2ND DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Mokaya for the applicant

Mr. Otieno for the 2nd & 3rd respondents

Mr. Begi for 1st respondent – Absent

Court Assistant – Michael Oyuko

