



**Mwanza & another v Moses (Environment and Land Case  
E144 of 2021) [2025] KEELC 7000 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7000 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E144 OF 2021**

**JG KEMEI, J**

**OCTOBER 9, 2025**

**BETWEEN**

**KENNEDY MUTUKU MWANZA ..... 1<sup>ST</sup> PLAINTIFF**

**JEREMIAH NDURUMO NDERITU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MATHEW MOSES ..... DEFENDANT**

**RULING**

1. What is before the court for determination is the applicant's motion dated 14/7/25 seeking Orders that the directions issued by the court on 9/6/25, which required parties to file written submissions and marked the defendant's case as closed, be set aside. Additionally, that the court should issue witness summonses to the representatives of Embakasi Ranching Company Limited and the Chief Land Registrar to attend court and testify in this matter.
2. Praxedes Kageha, Counsel for the applicant, stated that the case was scheduled for hearing on 9/6/25. Unfortunately, while she was on her way to court on the material day, she was involved in an accident, which prevented her from arriving on time. By the time she reached court, she found that the defendant's case had already been marked as closed, and the court had issued instructions to submit written arguments. Despite this, she stated that the defendant is still willing to testify and call witnesses, whom the court had already summoned. She urged the court to consider reopening the case so the defendant can present his defence to the Plaintiffs' case.
3. The respondents do not oppose the application.
4. I have read and considered the written submissions filed by the applicant in this application.
5. The key issue for determination is whether the applicant is deserving of the orders sought.



6. Order 12, rule 7 of the Civil Procedure Rules, 2010 which provides thus:

“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.”
7. The authority granted to the trial Court to set aside orders, as previously outlined, constitutes a discretionary power that is exercised judiciously. The application of judicial discretion is contingent upon the factual circumstances of each case.
8. In the case of *Mbogo & Another v Shah* [1968] EA 93 the Court held that:-

“.....the discretion to set aside an ex parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice”.
9. To ensure the proper exercise of judicial discretion by this court, consideration will be given not only to the conduct of the parties but also to the facts and circumstances of the case. This suit was instituted in 2021. The hearing commenced on 21/6/23, during which the plaintiffs testified, and their case was subsequently closed. Subsequently, the defendant filed two applications, among other things, seeking the court's disqualification from hearing the suit on the grounds that the subject matter's value fell within the lower court's pecuniary jurisdiction. The court appropriately dismissed this application. The second application sought for joinder of interested parties, which the court, after evaluation, directed that they should be called as witnesses. The third application, sought witness summons against his witnesses, was duly granted on 8/5/25.
10. From the foregoing, therefore, the conduct of the defendant in defending the plaintiff's claim cannot be described as that of an enthusiastic litigant. The applicant has tried every trick in the book to thwart the conclusion of the matter.
11. On the material date of the hearing, when the matter was called out in the morning, in the presence of counsel for the Plaintiffs, counsel for the defendant informed the court that she was ready to proceed. The court scheduled a hearing time for 10:30 am. However, at 11:05 am, neither the defendant nor his counsel was present in court. Upon the Plaintiff's counsel's application, the court directed that the defendant's case be marked as closed due to non-attendance and non-prosecution.
12. Section 1A (3) of our *Civil Procedure Act* provides as follows
  1. The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
  2. The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
  3. A party to civil proceedings or an Advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”.
13. It is well established that the case belongs to the party rather than the counsel. Accordingly, the party and their legal representative bear a duty to the court and to the other parties involved to adhere to the court's directions regarding the proceedings and to the overriding objectives of the court during the proceedings. Public policy demands that cases filed before the court be heard without delay,



as justice delayed is tantamount to justice denied. In this instance, there is no evidence indicating that the defendant was present in court. Furthermore, he has not sworn an affidavit to elucidate the reasons for his absence on the relevant date. The court has only heard from his legal representative, the learned counsel; his silence is highly conspicuous. The court disapproves of this conduct, which would ordinarily warrant sanctions.

14. As stated in the case of Philip Chemwolo & Anor Vs Augustine Kubende (1986) KLR 492 this court is often said to exist for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline... Fortified by the provisions of Art 159(2) (b) that decrees that justice shall not be delayed, and to serve the best interest of justice, the court allows the application with terms.
15. Final orders for disposal
  - a. The application is hereby allowed.
  - b. The Defendant is hereby ordered to promptly schedule a hearing for his defence within the next 15 days; failure to appear on the scheduled hearing date shall cause the orders issued herein to lapse automatically.
  - c. Upon the lapse of the said orders, the respondents shall be at liberty to list the case for directions on the judgment.
  - d. The application having not been opposed, I make no orders as to costs.
16. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Ms Wanjiru for the Respondents

N/A for the Applicant

C/A – Ms Yvette Njoroge

