



**Muthama v Njuguna & 2 others (Environment and Land Case Civil Suit
754 of 2017) [2025] KEELC 6820 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6820 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 754 OF 2017**

MD MWANGI, J

OCTOBER 3, 2025

BETWEEN

JIM NJUGUNA MUTHAMA PLAINTIFF

AND

VERONICAH WAIRIMU NJUGUNA 1ST DEFENDANT

PUBLIC HEALTH OFFICER KAJIADO 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

(In respect of the 1st Defendant Notice of Motion dated 18th June, 2025 the seeking setting aside of judgment delivered on 7th May, 2024)

Background

1. Veronicah Wairimu Njuguna, the 1st Defendant/Applicant herein seeks for the following prayers through her Notice of Motion dated 18th June, 2025.
 1. The ex Parte Judgment entered be set aside.
 2. The 1st Defendant/Applicant and or Plaintiff in the counterclaim be granted leave to unconditionally defend this matter and she given a chance to be heard.
 3. Cost of the Application.
2. The Application which is premised on Order 10 Rule 11, Order 22 Rules 22, 51 and 52 of the [Civil Procedure Rules](#) is supported by the 1st Defendant's Affidavit sworn on 17th June, 2025. The Motion is premised on grounds that the 1st Defendant was not aware of the hearing, judgment entered in favor of the Plaintiff nor that his then counsel on record M/S. M.M Uvyu and Co. Advocates ceased from



acting for her in this matter. It is alleged that although the 1st Defendant's counterclaim against the Plaintiff has a good defence, she was not personally served with a hearing notice nor the 10 days requisite notice on entry of judgment.

3. The 1st Defendant denies ever receiving a hearing notice of 15th November, 2023 indicated in the affidavit of service sworn on 14th November, 2023. She thus denies ever been served with hearing notice nor directions of the court by the Plaintiff. The Deponent asserts that she was utterly shocked mid last year to learn that her counsel had withdrawn from representing her based on the application dated 7th March, 2023.
4. The 1st Defendant avers that efforts to reach her successive advocate M/s Mwaniki Gitau & Co. Advocates who only entered appearance and failed to appraise her of the status of the suit has not borne any fruits. Further, her succeeding Counsel M/s Mokua Ndubi & Co. Advocates only sought for an extension of time to lodge an appeal instead of seeking to have the ex-parte judgment set aside.
5. The 1st Defendant claims that if she is not granted an opportunity to present her evidence, she will be subjected to an irregular and illegal process if the execution proceedings and ex-parte judgment are allowed to stand.

Plaintiff/Applicant's Reply

6. Jim Njuguna Muthama through a Replying Affidavit sworn on 16th July, 2025 urges the court to dismiss the Application with costs because it is fatally defective, incurably incompetent, mischievous and misleading as it is based on non-disclosure of material facts. It is further averred that the Application is Res judicata as the orders and issues raised are similar to the issues raised in the 1st Defendant Application dated 14th November, 2024 which was dismissed with costs to the Plaintiff. Further, the Application seeks to re-open the suit yet the issue of the 1st Defendant non-participation, absence of her legal representation and stay of execution of judgment was conclusively dealt with in an earlier ruling by this court. According to the Plaintiff, the 1st Defendant is estopped from re-opening the suit through piecemeal litigation.
7. It is affirmed that as at 7th May, 2024 when the judgment was delivered, the 1st Defendant's former counsel M/S. M.M Uvyu and Co. Advocates had ceased acting on account of lack of instruction and communication from the Defendant.
8. The Plaintiff alleges that unlike the 1st Defendant, he borrowed monies to facilitate costly repairs of the damages on the house instigated by the 1st Defendant when she hired goons to invade the suit property, forcefully evict tenants and demolish it on 22nd December, 2017. It is contended that the 1st Defendant has nothing to lose because she never purchased the suit property. Further, she has not demonstrated how she stands to suffer substantial loss, harm and damage if orders sought are not granted.
9. It is alleged that the 1st Defendant has no known assets or means to refund the decretal sum neither has she deposited the said monies as security for performance of the decree. Further, the 1st Defendant has not produced any documents to proof ownership nor sufficient reasons to warrant issuance of the orders sought.

Court Directions

10. When the Application came up hearing on 21st July, 2025, the directions of the court were that the application be dispensed with through written submission. Counsel for Plaintiff and 1st Defendant duly complied with the court directive by filing their respective submissions. The court has had the occasion to consider the submissions in the writing of this ruling.



Issues for determination

11. Upon careful analysis of the Motion, the reply thereto as well as the detailed submissions by the counsel for the Plaintiff and 1st Defendant, the singular issue for determination is whether the 1st Defendant has met the threshold for the setting aside of the judgment delivered on 7th May, 2024.

Analysis and Determination

12. Order 10 Rule 11 of the [Civil Procedure Rules](#) permits a court to set aside its judgment as follows;
“Where judgment has been entered under this Order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.”
13. In *Patel v E.A. Cargo Handling Services Ltd* (1974) EA 75, the court elaborated the discretion of setting aside a judgment was as follows;
“There are no limits or restrictions on the judge’s discretion to set aside or vary an ex-parte judgment except that if he does vary the judgment, he does so on such terms as may be just. The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given it by the rules.”
14. A similar dictum was also made in *Shah v Mbogo* (1967) EA 166, where the court stated as follows;
“This 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 is not designed to assist the person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.”
15. The Plaintiff commenced his claim against the Defendants on 2nd June, 2017 through a Plaint of even date. Since the institution of the suit, the 1st Defendant was represented by M/S. M. M Uvyu and Co. Advocates until 7th May, 2023 when the law firm filed an application to cease from acting for her. According to Counsel, this was influenced by irreconcilable differences and failure to be given proper instructions.
16. When the matter came up for hearing on 27th June, 2022, Mr. Uvyu, the 1st Defendant’s application for an adjournment was allowed after the counsel informed court that his client had relocated to the USA. In addition, he also mentioned that he would be filing an application to cease from acting for her. The court satisfied that that 1st Defendant had failed to attend court despite being served with a hearing notice as stated in the Affidavit of Service dated 14th November, 2023, allowed the suit to proceed to hearing on 15th November, 2023. Through a verdict delivered on 7th May, 2024, judgment was entered in favor of the Plaintiff.
17. The 1st Defendant now seeks to have this judgment set aside on grounds that she has a strong Defence, was never served with a hearing notice neither was she aware that her previous counsel on record M/S. M. M Uvyu and Co. Advocates had stopped acting for her.
18. The 1st Defendant’s earlier Notice of Motion Application dated 14th November, 2024, sought leave to appeal out of time and stay execution of judgment. The application was premised on grounds that she was not aware of the judgment nor that M/S. M.M Uvyu and Co. Advocates had ceased acting



for her. While dismissing the Application through a Ruling delivered on 30th April, 2025, the court noted as follows;

“The Applicant in a bid to explain the inordinate delay blames her previous advocates and urges the court not to visit the mistakes of her advocates on her. I find this explanation insufficient and insincere. As has been variously held in a number of decided cases, a case belongs to the litigant and not the advocate.....In this case, the Applicant was indolent and was unbothered by the progress of the case as her former advocate affirmed in his application to cease from acting for her in this matter.”

19. Going by the above finding, undoubtedly, the 1st Defendant’s allegation of her counsel’s mistake was conclusively dealt with by this Court. For that reason, I will not venture into this issue for a second time.
20. Taking into consideration 1st Defendant conduct vis-à-vis the above cited judicial decisions and legal provisions, the court finding is that the 1st Defendant is abusing and misusing the court process to frustrate the Plaintiff from enjoying the benefit of the judgment delivered in his favour. Her application is devoid of merits and good faith.
21. Consequently, I hereby proceed to dismiss the Notice of Motion dated 18th June, 2025 with costs to the Plaintiff.

It is so ordered

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 3RD DAY OF OCTOBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kioko for the 1st Defendant/Applicant

Ms. Nyakundi h/b for Mr. Koceyo for the Plaintiff/Respondent

N/A by the 2nd and 3rd Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

