



REPUBLIC OF KENYA



**Opande v Chebet (Environment and Land Case E020 of 2025)  
[2025] KEELC 7069 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7069 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E020 OF 2025**

**CK NZILI, J**

**OCTOBER 15, 2025**

**BETWEEN**

**TERESA KWAMBOKA OPANDE ..... PLAINTIFF**

**AND**

**KAND CHEBET ..... DEFENDANT**

**RULING**

1. The court is asked by an application dated 12/9/2025, to set aside the ruling and order issued on 23/7/2025 and all the consequential orders and to grant unconditional leave to defend the suit to the defendant. The reasons are contained on the face of the application and in a supporting affidavit sworn by Kanda Chebet on 12/9/2025.
2. The applicant says he is the beneficial occupier and owner of approximately 3 acres out of L.R. No. 4380/9 gifted to him by James Nyamweya (deceased), who was his employer as per the annexed letter to the chief, Cherangani, attached as KC-(1).
3. The applicant deposed that the ruling entered against him on 23/7/2025 is being executed against him, for he is being termed as a trespasser, yet he is elderly now approaching 100 years, and has lived on the land for over 30 years with his family.
4. The applicant deposes that his advocate has informed him that the matter was heard ex parte, he was not served with court processes, and that his draft defence raises triable issues for trial on merit.
5. The applicant deposes that he will suffer gross injustice, damage, and loss if condemned unheard, he deserves his day in court, and administration of justice requires a substantive investigation of all disputes, with the participation of all the parties. The applicant deposes that the hearing would cause no greater prejudice to either party, but more could be on him, if he is not allowed to be heard.



6. The application is opposed on grounds of opposition dated 20/9/2025 and a replying affidavit sworn by Teresa Kwamboka Opande, on 20/9/2025. It is deposed that there was proper service of the application, which came under certificate of urgency as per attached affidavit marked TO-(1) before the hearing of 19/6/2025.
7. The respondent states that the ruling notice was also served via email to the advocate on record as per the affidavit of service annexed as TO-(2).
8. The respondent states that the defendant's lawyer failed to file a memo of appearance and hence should have followed up on the proceedings, knowing very well of the interim application; hence, it is misleading for the applicant to allege lack of service or awareness of the matter.
9. The respondent denies the alleged gift of 3 acres of the suit land during the lifetime of the deceased; otherwise, the applicant was only permitted to occupy and look after the farm as a caretaker.
10. The respondent says that the only people gifted land were Meshack, John Anyenga, Joel Ruto Kand, and Zablon Maranga, in the ratios of 6, 5, 3, and 3 acres respectively. Otherwise, the defendant did not feature in the list.
11. The respondent deposes that after the demise of the owner, the estate administrator offered settlement to the employees of Vumilia Estate measuring 15 acres and the defendant was among those offered allocation, but refused to be settled there which was followed by an offer from the late Peter Opande, to procure land for him, but declined the offer, and instead unlawfully continued in occupation of the suit land.
12. The respondent terms the application as a calculated attempt to regularize unlawful occupation and delay the proceedings; hence, the application is an abuse of the court process, more so when his counsel on record knew of the proceedings and the interim orders as alluded above.
13. The respondent relies on written submissions filed on 22/9/2025. It is submitted that there is no sufficient cause to set aside the lawful orders of this court; otherwise, as demonstrated, there was proper service of summons and the application before the ruling was rendered, and that the defendant had duly instructed counsel to come on record for him.
14. This matter was filed on 8/5/2025 under a certificate of urgency. By orders dated 8/5/2025, the court ordered that the suit papers be served for mention on 19/6/2025. The record shows that the service of court processes was properly done as per an affidavit of service sworn by Jackson Nyongesa Simiyu on 15/5/2025. After the court was satisfied with the same, the application was heard on 19/6/2025. The court listed the same for ruling on 23/7/2025, and directed that a ruling notice be issued.
15. On 23/7/2025, learned counsel Mr. Oloo appeared for the defendant. He took the ruling and sought leave to file a statement of defence, without the court granting that the same be filed within 30 days, and for parties to comply with Order 11 of the Civil Procedure Rules by 30/8/2025.
16. A mention for the pre-trial conference and to fix a hearing date was given for 23/9/2025. The record shows that a memorandum of appeal was filed dated 26/5/2025 by the firm of Benedict Odhiambo & Co. Advocates.
17. The applicant complains that he was condemned unheard. He disputes knowledge of the suit and non-service of the court processes. The applicant has not sought to cross-examine the deponent of the affidavits of service, which show that service was effected on 15/5/2025 at 3:57 p.m. in the presence of the area elder called Evans and the plaintiff at Moite B village, Nzoia sub-location, as well as before his son Patrick.



18. In *James Kanyiita Nderitu & another -vs- Marios Philotas Ghikas & another* [2016] eKLR, the court held that where a party has been duly served and fails to attend court, subsequent judgments or orders are regular and their seeking aside is not a matter of right but a discretionary remedy. Setting aside orders as held in *Shah -vs- Mbogo & Others* [1967] EA 116, is intended to avoid injustice or hardship resulting from accident, inadvertent or excusable mistake or error, but not to assist a person who has deliberately sought to obstruct or delay the course of justice.
19. In this application, though the defendant denies knowledge or awareness of the suit, he does not explain how he was able to instruct a law firm by 26/5/2025 and not know that the matter was due for mention on 19/6/2025.
20. The law firm has not explained why they did not attend court on 19/6/2025 when the matter was scheduled for a hearing or directions. In *Muchanga Investments Ltd -vs- Safari Unlimited (Africa) Ltd & Others* [2009] eKLR, the court described abuse of court process as conduct that impedes the due administration of justice. The record shows that the defendant was granted leave to file a statement of defence within 30 days from 23/7/2025. None was filed as ordered. The conduct of the defendant shows that compliance with court orders or timelines set in the law is not a priority but an option.
21. The application was heard after the defendant was duly served with a summons to enter an appearance and also with the application before the issuance of any interim orders. Setting aside is an equitable remedy. The main concern of the court is to do justice to the parties, as held in *Patel -vs- E.A Cargo Handling Services Ltd* [1974] EA 75. In this matter, the applicant had already filed a memorandum of appearance before the interlocutory orders were made. He does not state why he did not attend court or file replying affidavits or any other papers to oppose the application by 19/6/2025, since he had already instructed counsel to come on record.
22. Between 23/7/2025 and 26/5/2025, the explanation for inaction has not been offered. The applicant was given a chance to respond to the application, but opted not to. He cannot turn around and say that the court condemned him unheard. The applicant is the one who opted not to participate in the hearing to safeguard his rights. To try to unwind the clock after the horse has bolted must be based on reasons, especially where the defendant has been put on notice as early as 15/5/2025 that adverse orders were likely to be issued against him. Waiting until 12/9/2025 to try to move the court is not only after an inordinate delay, but also shows that the applicant was indolent.
23. Whereas a temporary order of injunction may be varied, set aside, and or vacated, the applicant has to meet the conditions set under Order 40 Rule (7) of the Civil Procedure Rules. In *Ochola Kamili Holdings Limited -vs- Guardian Bank Limited* [2018] eKLR, the court said it is only when the person conduct does not meet the approval of the court which granted the orders, uses the orders to prejudice the opponent, sits on the matter and abuses the same on the purpose for which the injunction was granted or where there was misrepresentation or concealment of material facts. See *Ragui -vs- Barclays Bank of Kenya* [2002] 1 KLR 647.
24. The applicant has not proved that there was concealment of material facts or misrepresentation of facts, a radical change in the circumstances of the suit, rendering the orders invalid, misconduct on the part of the respondent, or proof that the sustenance of the injunction would cause an injustice. See *Atlas Copco Customer Finance AB -vs- Polarize Enterprises* [2016] eKLR.
25. In the ruling, the court did not grant any eviction orders. The orders issued were interim in nature and not final. The order extracted by the plaintiff is not meant to be used to evict anyone from the suit land. The respondent made full disclosure that the defendant is in occupation of 3 acres of the suit land, where he has erected structures. It was termed as a continuing trespass. A survey report dated



13/6/2025, attached to the supporting affidavit, shows that the defendant has permanent structures on the land. Refusal to vacate was disclosed in the affidavit sworn on 2/5/2025.

26. The plaintiff seeks a declaration that the defendant is a trespasser on the land and eviction orders. The court was alive to all these facts when it rendered its ruling on 23/7/2025. The ruling was not procured through non-disclosure, misrepresentation of facts, or concealment of material facts.
27. There is no evidence that the plaintiff has issued a notice of eviction pursuant to the ruling and the order extracted. Eviction is governed by Section 152 A-I of the [Land Act](#). I find the application lacking merit. It is dismissed with costs.

Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 15<sup>TH</sup> DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

No appearance.

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

