



Omusundi v Ethics and Anti-Corruption Commission & 2 others (Environment and Land Petition E002 of 2023) [2025] KEELC 6670 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND PETITION E002 OF 2023
A OMBWAYO, J
OCTOBER 2, 2025**

BETWEEN

LABAN OMUSUNDI APPLICANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

**KENYA INDUSTRIAL ESTATES, SOUTH RIFT BRANCH - NAKURU &
ANOTHER & ANOTHER 2ND RESPONDENT**

RULING

1. Susan Kiprono and family the 2nd interested party and applicant herein has come to this with an application dated 9th May 2025. She seeks an order that This Honorable Court be pleased to review, set aside and/or vary the orders issued on 11th November, 2024 dismissing the Applicant's application dated 15th October, 2024 and the order issued on 27th January, 2025 dismissing the Application dated 26th November 2024.
2. Upon grant of prayer no. 2 above, this Honorable Court invoke its inherent power in this case in the substantive justice and re-instate the application dated 15th October, 2024 and fix the same for hearing on priority basis. The Application dated 10th April 2025 be stayed pending the hearing and determination of the Application herein.
3. The application is based on facts that the application dated 15th October, 2024 was scheduled for hearing on 11th November 2024.
4. On the said date, the 2nd interested party was present in open court whilst her advocate was appearing online, however, when the matter was called out, her call dropped. The Honorable Court advised the 2nd Respondent to have their advocate file the relevant application for which the same was done by filing application dated 26th November, 2024.



5. When the Application dated 26th November, 2024 was coming up for hearing on 19th December, 2024, the court granted status quo of its judgment delivered on 27th September, 2024.
6. The 1st interested party's advocate was made to believe that status quo was granted on the initial application pending the hearing and determination of the Appeal. That it was not until 8th May, 2025 that the 2nd Interested party's advocate was stumbled upon the matter herein in court coming up for hearing of an application dated 10th April, 2025 by the 3rd interested party, who seeks for contempt of court orders against the 1st interested party.
7. Failure to attend court was not in any way occasioned by fault of the 2nd interested party and the 2nd interested party should not be condemned unheard. That the Application herein, has been brought without undue delay.
8. According to the applicant, the issues for determination before the court of appeal are pertinent as it relates to ownership of a disputed parcel of land. No prejudice will be suffered by either party if the application herein is allowed as prayed.
9. The application is opposed by John Mwangi Karanja who states that the application is meant for the interested party to evade the consequence of contempt and that the 1st interested party/Applicant's current application is nothing more than a blatant attempt to relitigate issues that have already been fully and finally determined by this Honorable Court.
10. Following the entry of judgments the 1st interested party/Applicant previously filed an application seeking the stay of execution of the Decrees and Orders of this Honorable Court arising from its Judgment of 27th September 2024. The Application dated 15th October, 2024 was scheduled for hearing on the 11th November, 2024. The applicant was not present online from the onset of the Court session where he challenged the application and the same was dismissed for non-attendance and costs awarded to the respondents.
11. According to the respondent, the Advocate of the 1st interested party/Applicant and their client were not keen enough to attend the court. The respondent states that there is no way the 1st interested party/Applicant could be in open court to attend their own application and fail to hear the call of their case number and at the same time the court assistant is diligent in making sure every case number called is well heard.
12. The respondent contends that the 1st interested party/Applicant present application fails to present any material, or compelling evidence that was not available or could not have been discovered with reasonable diligence at the time of their previous unsuccessful application to, set aside/review the judgment. The 1st interested party/Applicant merely recycles arguments and grievances that have already been adjudicated and rejected by this Court.
13. The respondent contends that allowing this application would not only constitute an abuse of process but would also undermine the finality of judgments and the authority of this Court. It would encourage litigants to endlessly re-open concluded matters. In the event that the application is allowed then it will contravene the provisions of the orders to access to information that the Petitioners sought so as to protect loss and continuous loss of public properties in the Republic of Kenya.



14. I have considered rival arguments and do start by stating that this court has unfettered discretion to reinstate an application that was dismissed for non attendance. In the case *Shah -vs- Mbogo & Another* (1967) EA 1116, the court stated on the matter of its discretion, that:-

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”

15. A Court's discretion to set aside its ruling/Judgment is not restricted but should be so exercised not to cause injustice to the opposite party. It is incumbent upon the party seeking the court's favour to adduce sufficient and plausible reasons that are demonstrable and persuasive to the court.

16. I have considered the application and the response and do find that the applicant has not explained satisfactorily why her advocate failed to attend court on the 27th of January 2025. The applicants counsel was in court when the date of 27th January 2025 was granted. Moreover, the applicant did not take action for three months after the order made on the 27th January 2025. The delay in filing this application has not been explained satisfactorily as stumbling on the matter in the cause list is not a sufficient reason. I do find that the applicant having approached this court under certificate of

17. urgency should have been keen to prosecute her application. The applicant was enjoying orders of status quo but was very reluctant to proceed.

18. In the case of *Utalii Transport Co. Ltd and 3 Others -vs- N.I.C. Bank and Another* (2014) e KLR, the court held that:

“It is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court.”

19. I am minded that dismissal of cases or applications upon summary procedure may be draconian but when the occasion calls for such action, the court should not shy away from taking such measures - *Kenya Power & Lightning Co. Ltd -vs- Alliance Media Kenya Ltd* (2014) e KLR. I find no merit in the application and the same is dismissed with costs.

SIGNED BY/FOR:

HON. JUSTICE ANTONY O. OMBWAYO

NAKURU ENVIRONMENT AND LAND COURT ENVIRONMENT AND LAND COURT

