



REPUBLIC OF KENYA



KENYA LAW
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**Wairimu & 2 others v Kanyua (Environment and Land Case
E048 of 2025) [2025] KEELC 6841 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6841 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E048 OF 2025**

MAO ODENY, J

OCTOBER 9, 2025

BETWEEN

MARGARET WAIRIMU 1ST APPLICANT

DAVID WACHIRA 2ND APPLICANT

CAROLINE MURUGI 3RD APPLICANT

AND

ROBERT MURUTHI KANYUA RESPONDENT

RULING

1. This ruling is in respect of the Respondent's Notice of Motion Application dated 30th May, 2025 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to set aside the ex-parte proceedings and orders issued on 21st May, 2025.
 - d. That this Honourable court be pleased to grant leave to the Respondent to file his response to the application dated 5th May, 2025.
 - e. That the costs of this application be borne by the applicants.
2. The application is supported by the annexed affidavit of Robert Muruthi Kanyua, sworn on 30th May, 2025, where he deponed that the application dated 5th May, 2025 came up for mention on 21st May, 2025. The same was allowed uncontested and ex-parte orders were issued in his absence. It was his



deposition that the applicants were directed to serve him with the application within five days but he was served on 19th May, 2025.

3. The Respondent deponed that he should be allowed to oppose the Miscellaneous Application No E048 of 2025 as he has a good defense, which raises triable issues. He urged the court to set aside the ex-parte proceedings and allow him to put in his response to the Application.
4. Margaret Wanjiru, the 1st Applicant, filed a Replying Affidavit sworn on 11th June, 2025, and deponed that the Respondent was served with the application, which he admits, together with the orders of the court issued on 6th May, 2025, which had a mention date. She deponed that the Respondent neither opposed the application nor appeared in court on 21st May, 2025 when the matter came up for mention. It was her deposition that the orders sought were granted and urged the court to dismiss the application as it lacks merit.
5. Robert Muruthi Kanyua filed a Further Affidavit sworn on 30th June, 2025, and deponed that he was served with an application which did not have any date or directions of the court.

Respondent's Submissions

6. Counsel for the Respondent filed submissions dated 16th July, 2025, and identified the issue for determination as: whether the Honourable court should set aside the ex-parte proceedings and orders issued on 21st May, 2025, and grant leave to the Respondent to file his response to the application dated 5th May, 2025. Counsel submitted that the Applicants filed this application under certificate of urgency seeking an order of eviction against the Respondent, and the application was placed before the duty judge on 6th May, 2025.
7. Counsel further submitted that the Applicants were directed to serve the Respondent with the said application within five days and the application was fixed for mention on 21st May, 2025. It was counsel's submission that despite, the issued directions, the Applicants mischievously served the Respondent with the application only without the directions of the court.
8. Mr. Mwangi further submitted that the case number of the matter was indicated as ELC MISC APP E048/2025 and not the actual case number being NKR ELC LC/E048/2025. Counsel submitted that as a result of the Applicant's mischievous acts, on 21st May, 2025 the proceedings were taken ex-parte and the application dated 5th May, 2025 was allowed unopposed.
9. Counsel relied on Order 12, Rule 7, and Order 51, Rule 15 of the Civil Procedure Rules, and the case of Stephen Ndichu vs Monty's Wines and Spirits Ltd [2006] eKLR, and urged the court to allow the application as prayed.

Applicants' Submissions

10. Counsel for the Applicants filed submissions dated 4th July, 2025, and submitted that the Respondent has not obtained any injunctive or stay orders against the ruling dismissing his suit. Counsel submitted that the Respondent has been in violation of the court orders issued by the lower court in Nakuru Cmelc Case No E242 OF 2023 where judgment was delivered on 26th September, 2024 dismissing his case.
11. Ms. Njoroge submitted that this application is an abuse of court process, and, relied on the cases of Muchanga Investments Limited vs Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No 25 of 2002 [2009] eKLR and Keigi vs Mwaura (Civil Appeal (Application) E319 of 2022 [2022] KECA 1348 (KLR), and urged the court to dismiss it with costs.



Analysis And Determination

12. The issue for determination is whether this court should set aside its orders issued on 21st May 2025 allowing the Applicant's Notice of Motion application dated 5th May, 2025, in the absence of the Respondent. It is the Respondent's contention that the Applicants were directed to serve him with the application within five days but he was served on 19th May, 2025.
13. The orders of the court in respect of the Application dated 5th May, 2025, were clear that the Respondent was to be served within five days. On the court record is an Affidavit of Service dated 19th May, 2025, sworn by one Samuel N. Gekanana, showing that the Respondent was served with the application on 19th May, 2025.
14. The affidavit indicates that the Respondent was only served with, the Application under Certificate of Urgency, Supporting Affidavit and annexures thereto and not the mention date of the Application. It follows that the Respondent was neither served within the stipulated period nor with the mention date indicating when to appear in court.
15. Counsel for the Plaintiff has also not submitted on the anomaly of service on 19th May 2025 and the lack of service with the mention date. The issues raised by the Applicant's counsel on abuse of court process emanating from the lower court proceedings can be argued when this application is heard inter partes.
16. Order 51, Rule 15 of the Civil Procedure Rules provides; "The court may set aside an order made ex parte." The Court of Appeal in *Richard Nchapi Leiyagu v IEBC & 2 others (2013) eKLR* expressed itself as follows:

"We agree with those noble principles which go further to establish that the court's discretion to set aside an ex parte judgment or order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or inexcusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice."
17. I find that the Respondent's Notice of Motion application dated 30th May, 2025, has merit and issue the following orders:
 - a. The ex-parte proceedings and orders issued on 21st May, 2025 are hereby set aside.
 - b. The Respondent is hereby granted leave to file his response to the application dated 5th May, 2025 within five days from the date herein and fix a date for the hearing of the Application.
 - c. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

