



REPUBLIC OF KENYA



**Watibini & 2 others v Board of Management St. Brigid's Girls High School Kiminini & 2 others
(Environment and Land Case 24 of 2020) [2025] KEELC 6584 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6584 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 24 OF 2020**

CK NZILI, J

OCTOBER 1, 2025

BETWEEN

PROTUS MASIBO WATIBINI 1ST PLAINTIFF

VERONICA NANGAMI WATIBINI 2ND PLAINTIFF

CONCEPTA NANJALA WATIBINI 3RD PLAINTIFF

AND

**THE BOARD OF MANAGEMENT ST. BRIGID'S GIRLS HIGH SCHOOL
KIMININI 1ST DEFENDANT**

THE CATHOLIC DIOCESE OF KITALE 2ND DEFENDANT

GETRUDE NAFULA TSUMA 3RD DEFENDANT

RULING

1. The court is asked to vary, set aside, and or review its orders of 2/7/2025 dismissing the plaintiffs' suit, reinstate it, and stay the delivery of judgment pending hearing and determination of the application. The reasons are contained on the face of the application and in a supporting affidavit of Protus Masibo Watibini, sworn on behalf of the co-applicants on 16/9/2025.
2. It is deposed that the deponent was taken ill and went to Nairobi, that is why he did not attend court as per a medical report marked PMW-1, that he informed his former advocates on record that he was sick or had gone on treatment; that his advocates on record did not attend court; that rules of natural justice demand that he be allowed to be heard on merits and should not be condemned unheard.
3. It is averred that non-attendance was not deliberate; that being an emotive land matter, his co-applicants will be greatly prejudiced if not heard; there will be no prejudice to the respondents, since they are in occupation and possession of the land, and that he should not be punished due to mistakes of his counsel on record who failed him.



4. The application is opposed through a replying affidavit sworn by David Nyakanga Onyancha on 19/9/2025. He deposes that the firm of B.N. Munialo & Co. Advocates is improperly on record for non-compliance with Order 9 Rule 9 of the Civil Procedure Rules.
5. It is deposed that there is no explanation for the non-attendance of the 2nd and 3rd plaintiffs. The defendants depose that evidence of hospitalization on 2/7/2025 is lacking in the medical report, or any other tangible evidence for non-attendance of the deponent.
6. The defendants depose that the non-attendance was deliberate, inexcusable, and unexplainable, in view of the omissions on PMW-1. The defendants say that the discretion of the court should not be exercised since the application not only lacks merits but is also incompetent.
7. The court record shows that when this matter came for the first hearing on 24/2/2025 in the presence of the parties, learned counsel for the plaintiffs told the court that the parties were engaged in a possible out-of-court settlement; hence, they needed time to conclude the same. The said position was confirmed by Mr. Onyancha and Miss Chilaka, learned counsel for the defendants. By consent of the parties, the matter was taken out for the parties to attempt a possible settlement.
8. As a measure of assisting negotiations, the court granted an order for the County Land Surveyor to visit LR No. 6671 to confirm its size, which is under occupation of the 1st defendant, and to file a report. Parties were directed to furnish the surveyor with any relevant documents to carry out the exercise, and if need be, attend the site visit. Parties also agreed on a hearing date of 2/7/2025.
9. When the matter came up on 2/7/2025, there was no appearance by either the plaintiffs or their advocates on record. The matter was given a time allocation for 10:30 a.m. At 10:40 a.m., the defendants came ready to proceed. Efforts to reach out to the plaintiffs' counsel on his cellphone were unsuccessful. The defendants moved the court to have the plaintiffs' case dismissed and for the counterclaim to be prosecuted.
10. The defendants testified in support of their defence and counterclaim, and a judgment date was given for 18/9/2025.
11. It appears that the plaintiffs filed a notice of change of advocates on 16/9/2025, replacing the earlier advocates on record, who they blame for not attending court on the hearing date. The plaintiffs rely on a medical report dated 11/7/2025 from Coptic Hospital. The medical report is silent on whether the patient was attended to on 2/7/2025. Medical treatment notes for 2/7/2025 have not been attached to the medical report.
12. Similarly, evidence of payment for attendance at the hospital on 2/7/2025 or soon thereafter or before the said date is lacking. Evidence of any prior treatment for the disclosed illnesses. At the very least, the court could have been furnished with the medical history of the patient to show that after he was attended to on 2/7/2025, the deponent was placed on bed rest or was admitted, hence his unavailability in court at the hearing date.
13. There are three plaintiffs in this suit. Even if the deponent was sick or had travelled out of town, the court has not been told why the rest of the plaintiffs did not attend court on said date to convey the predicament of the deponent. A case belongs to a litigant and not his lawyer on record. A litigant should take all the necessary measures to attend court.
14. A party that has been given a chance to attend court and squanders it cannot be heard saying it was condemned unheard, without an explanation why it did not exploit the opportunity. In this instance, the applicants rely on the medical report and nothing else. Evidence that the plaintiffs called their



erstwhile advocates to confirm the progress of the case or logged in virtually to attend court and notify it that they were not ready to proceed in view of sickness is lacking. The applicants did not take the earliest opportunity to come to court as diligent litigants until the eve of the judgment. No explanation for the delay of over two months has been offered.

15. Legal business, like any other duty, must be taken seriously and must be conducted effectively. Expeditious disposal of suits is a co-shared obligation. The 2nd and 3rd plaintiffs have not explained where they were on the hearing date, yet they have authorised the deponent to say that they will be prejudiced if they are condemned unheard. The sword of justice cuts both ways. It is not enough to blame a lawyer for every mistake in litigation. Parties and litigants should not always throw mud at lawyers for every inaction on their part.
16. The plaintiffs have not owned up to the mistake. They want the court to unwind the wheels of justice, yet justice delayed is justice denied. Setting aside, reviewing, or varying a dismissal order is a serious issue. Material why the court should revisit the matter must be tangible and cogent. Whereas the court has discretion to do so, the discretion should not be used to assist one who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice. See *Shah -vs- Mbogo* [1967] EA 1116.
17. Prolonged delay in moving court is a necessary factor to consider, as held in *Mwangi S. Kaimenyi -vs- Attorney General*, Civil Suit No. 720 of 2009. Where there is an excusable and justiciable mistake or reason, a court may exercise discretion as held in *Tana and Athi Rivers Development Authority -vs- Jeremiah Mwakio & Others* [2015] eKLR. In the circumstances, I find the explanation by the deponent lacking merits. The application suffers from the defect of Order 9 Rule 9 of the Civil Procedure Rules. It is dismissed with costs.
18. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 1ST DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant – Dennis

Miss Munialo for plaintiff present

1st plaintiff present

Songole for Onyancha for 2nd defendant present

Miss Chilaka for the 1st defendant absent

