



Keya v Aloo (Sued as the Administrator of the Estate of the Late Moses Kitagwa Allo) (Environmental and Land Originating Summons E005 of 2024) [2025] KEELC 7417 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2024**

E ASATI, J

OCTOBER 30, 2025

IN THE MATTER OF AN APPLICATION UNDER SECTION 38 OF THE ~~AKN/~~ KE/ACT/1968/21 LIMITATION OF ACTIONS ACT (CAP 22) LAWS OF KENYA

BETWEEN

CHRISTOPHER ALUDA KEYA PLAINTIFF

AND

KEVIN KITAGWA ALOO (SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE MOSES KITAGWA ALLO) DEFENDANT

RULING

1. The Notice of Motion application dated 17th September 2025 was brought on behalf of the Defendant pursuant to the provisions of Order 51 Rule 15 of the Civil Procedure Rules and sections 1, 1A and 3 of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya. The application seeks for orders that:-
 - a. The ex parte proceedings of the court and all the attendant directions and orders of the court be set aside and the annexed draft Replying Affidavit be deemed as a proper defence to the Originating Summons upon payment of the requisite fee.
 - b. The court be pleased to set down the cause for hearing.
 - c. The costs of the application be in the cause.
2. The application was supported by the contents of the Supporting Affidavit sworn by the Defendant on 17th September 2025 and the annexures thereto.
3. The substantive prayer sought is for an order setting aside the proceedings and giving the Defendant a chance to defend the suit.



4. The grounds for setting aside proceedings are generally that the applicant must explain to the satisfaction of the court the reasons for non-participation in the proceedings so far taken, demonstration that the applicant has a good defence that raises triable issues and that prejudice will not be occasioned to the other party.
5. The grounds upon which the application herein is brought are that the applicant was never served with any pleadings or hearing notice in the matter. That the applicant only got wind of the matter at the registry when he went to inquire about a children's appeal case which was scheduled for hearing on 30th September 2025. That there have been many cases between the applicant and the respondent over the same suit property and that where the applicant is served, he always engages Counsel. That the concealment of the existence of this matter from the applicant was a calculated move not to disclose the several verdicts by courts over the same. That it is in the interest of justice that the application be allowed.
6. The Respondent's case is that the applicant has not offered any plausible explanation that prevented him from entering appearance and filing reply within the stipulated time. That there was inordinate delay as the application was filed 9 months after the matter had proceeded ex parte.
7. That the application is an afterthought and a ploy to further hamper the matter. That the plaintiff's Advocates commissioned the services of a licensed court process server who served the applicant with Summons to Enter Appearance, Originating Summons, Supporting Affidavit and the documents attached thereto on 7th February 2025.
8. That again on 12th June 2025 the same process server served the applicant with a hearing Notice, list of witnesses, witness statements and list of documents. That the application as presented is incompetent, constitutes an abuse of the due process of the law and ought to be dismissed with costs.
The application was heard orally on 13/10/2025.
9. I have considered the submission made by counsel. The applicant's explanation for non-participation in the proceedings is that he was not served with any pleadings or hearing Notice.
10. To prove that the applicant was served, the plaintiff has annexed to the Replying Affidavit, two Affidavits of service by a process server. The first Affidavit of Service was sworn by Amos Kivisu Mutambu on 7th February 2025. The process server explained in detail where and how he located the applicant herein for service.
11. The descriptions and explanations in the Affidavit of service leave no doubt that the process server located the applicant in person and served him with the Originating Summons and Supporting Affidavit dated 17th December 2024.
12. The next Affidavit of service was sworn by the same process server on 13th June 2025. The said Affidavit as well left no doubt that the applicant was served with hearing Notice, list of witnesses, witness statements and list of documents.
13. No reason has been given why the process server would lie that he served. The applicant has not sought opportunity to cross-examine the process server to test the credibility of his averments. The court finds that the applicant was indeed served with the pleadings and hearing notice. The explanation given for non-participation in the proceedings is not credible.
14. The applicant has however attached to the Supporting Affidavit, a draft Replying Affidavit intended to be a reply to the Originating Summons. Perusal of the same shows that the applicant has a defence to the plaintiff's claim that raises triable issues for which he should be given opportunity to be heard.



15. The court notes that the plaintiff had already testified and closed his case before the application was filed. The plaintiff will no doubt be prejudiced if the proceedings are set aside. However, he can be compensated by an award of costs.
16. For the foregoing reasons and to ensure that substantive justice is served, the court exercises its discretion in favour of the applicant and allows the application as follows:
 - i. The ex parte proceedings taken herein are set aside.
 - ii. The draft Replying Affidavit is deemed the duly filed Replying Affidavit upon payment of the requisite court filing fee. The requisite court fees be paid within the next 14 days hereof.
 - iii. Thrown away costs of Kshs 20,000/= awarded to the Plaintiff.
 - iv. To expedite disposal of the matter the matter is listed for directions on the Originating Summons on 10/12/2025.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 30TH DAY OF OCTOBER, 2025.

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant.

Odah for the Plaintiff/Respondent.

Nyabera h/b for Chitwah for the Defendant/applicant.

