



Kinyanjui (Suing as the Administrator of the Estate of the Late Peter Mugo Gitagia) v Nkonyia (Environment and Land Case 56 of 2020) [2025] KEELC 7359 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 56 OF 2020
LC KOMINGOI, J
OCTOBER 28, 2025**

BETWEEN

MARGARET MUTHONI KINYANJUI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE PETER MUGO GITAGIA) PLAINTIFF

AND

LANTEI OLE NKONYIA DEFENDANT

RULING

1. This is the ruling in respect of Notice of Motion dated 4th April 2025 brought pursuant to Article 48, Article 159 (2) (b) of *the Constitution* of Kenya 2010; Order 12 Rule 2, Order 18 Rule 10 of the Civil Procedure Rules and all other enabling provisions of the law.
2. It seeks orders that;
 - i. Spent;
 - ii. The proceedings commenced on 16th July 2024 be set aside and the Defendant be allowed to defend the suit.
 - iii. The Defendant be allowed to file his statement together with list of documents.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 14. It is supported by the sworn Affidavit of Lantei Nkonyia Kiikarde the Defendant/Applicant.
4. He avers that he suffered a stroke in the year 1997 and since then he has been indisposed he relies on his wife, Purity Lantei Kusalo for support. He deponed that he was not properly briefed by his Advocate to enable him file his documents. He denied that he signed the agreement dated 27th February 2020. He urged that he be allowed to defend the suit.



5. The Plaintiff in her Replying Affidavit contested the application on the grounds that it was defective having been brought under the wrong provisions of law and no reasons had been given as to why the Defendant/Applicant did not attend the hearing. She deponed that the Defendant had a habit of delaying the suit either by non-attendance or changing of advocates. That this application was a delaying tactic and it ought to be dismissed.
6. The Defendant in his further response denied that he was served by one Emilio Ceaser Mugo on 20th June 2024. He deponed that he had no reason to keep prolonging the suit because it was strenuous to his already ill health.
7. The application was canvassed by way of written submissions.

Submissions of the Defendant/Applicant

8. Counsel submitted that the service of court documents claimed to have effected on the Defendant on 20th June 2024 was false. It was his argument that Order 5 Rule 15 Civil Procedure Code had a statutory format in form No. 4 which stipulates how a proper service should be effected. However, in the Affidavit of Service sworn, the details of the Defendant's sons such as their names and description of location or purpose of visit was vague. It was also submitted that in the alleged agreement of transfer, the identification number indicated was mutated and it kept being changed. Counsel also argued that the Defendant suffered a stroke in the year 1997 and he should not be adjudged as a contemnor because of his frail health. He should instead be accorded a fair trial as per Article 48, 54 and 57 of [the Constitution](#) and as held in *Pinnacle Projects Limited vs Presbyterian Church of East Africa Ngong Parish & Another* (2019) eKLR. Equally, that the change of advocates should also not be construed as an abuse of court and the application should be granted as sought.
9. At the time of writing this ruling, the Plaintiff had not filed her submissions.

Analysis and determination

10. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the written submissions and the authorities cited. I find that the single issue for determination is:

i. Whether the proceedings commenced on 16th July 2024 should be set aside and the Defendant be allowed to defend the suit.

11. Before this Court is the Notice of Motion dated 12th April 2025, seeking that the proceedings for 16th July 2024 be set aside and the Defendant be allowed to defend the suit.
12. The Defendant states that he suffered a stroke in 1997 and has since remained indisposed, relying on his wife for support. He also deponed that his previous Advocate failed to inform him of the court's requirements and timelines for filing his defence, and that he did not execute the agreement dated 27th February 2020. The Plaintiff, in opposition, maintains that the application is defective, frivolous, and an abuse of court process, arguing that the Defendant has consistently delayed the matter through non-attendance. He also changed Advocates often. She asserts that the application is a mere tactic to delay final determination of this suit.
13. The court record shows that the Plaintiff testified on 20th June 2024 and closed her case. On this day, the Defendant was present in court in person. On 25th July 2024, the defendant was granted leave to file his documents and on 6th November 2024, the defendant was still present in person. On 2nd December 2024, counsel for the defendant informed court that he had instructions from the Defendant. And that



due to the defendant's disability, they would seek his representation through a guardian. Thereafter this application seeking to set aside the proceedings and reopen the Plaintiff's case was filed.

14. I have gone through the court record, and find that the Defendant has a history of delaying these proceedings. He does this by constantly changing Advocates. This has hampered the expeditious disposition of this suit.
15. The Defendant was present in court when the plaintiff testified there is no justifiable reason to set aside the proceedings.
16. I have gone through the Defendants statement of Defence, and find that it raises no triable issues. He admits that he sold the land to the late Peter Mugo Gitagia.
17. The court record is clear that since the Plaintiff testified the Defendant was given several opportunities to file his documents but he has not. This suit was filed in 2020. He has no desire to defend the suit.
18. The upshot of the matter is that I find no merit in this application and the same is dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF OCTOBER 2025.

L.KOMINGOI

JUDGE.

In the Presence of:

Mr. Mwangi for the Plaintiff/Respondent.

N/A for the Defendant/Applicant.

Court Assistant – Peter.

