



**Rege v Achola & 2 others (Environment and Land Miscellaneous Application
E012 of 2023) [2025] KEELC 60 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 60 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2023
SO OKONG'O, J
JANUARY 20, 2025**

BETWEEN

JAMES GORDON REGE APPLICANT

AND

JOSEPH ODERO ACHOLA 1ST RESPONDENT

MOSES ODERO ACHOLA 2ND RESPONDENT

DANIEL ODHIAMBO ACHOLA 3RD RESPONDENT

RULING

1. The Applicant brought this miscellaneous application by way of Chambers Summons dated 29th May 2023. The application was brought as a reference against the taxation of the Respondents' party and party bill of costs by Hon. K. Cheruiyot SPM on 30th March 2023 in Kisumu ELCC No. 186 of 2018. The parties failed to appear before the Deputy Registrar on several occasions when the application was listed for directions. On 11th March 2024, the Deputy Registrar ordered that the matter be mentioned before this court on 30th July 2024 for dismissal for want of prosecution.
2. When the advocates for the parties appeared before me on 30th July 2024, both did not know why the matter was coming up in court on that date. I perused the physical court file and noted that there was a Chamber Summons application dated 29th May 2023 pending. I therefore informed the advocates for the parties that that was what was listed for dismissal. Instead of hearing the advocates for the parties on why the said application should not be dismissed, I gave directions on the hearing of the application. I gave the Respondents leave to respond to the application and timelines for the filing of submissions. The matter was thereafter listed for mention on 22nd October 2024 to confirm the filing of submissions and to fix a ruling date. On 22nd October 2024, none of the advocates for the parties turned up in court and I fixed the matter for ruling on 20th January 2025.



3. While I was perusing the file to prepare the ruling, I noted that the Applicant had realised that his reference was filed out of time without leave of the court and had filed another application on 24th July 2024 by way of an Originating Summons dated 24th July 2024 seeking leave to file reference out of time. I noted further that the said application had come up before me ex parte on 25th July 2024 and I gave directions that the same be mentioned before me on 30th July 2024 for directions on the hearing thereof.
4. It follows from the foregoing that when the matter came before me on 30th July 2024, two applications were pending. These were; the reference brought by way of Chamber Summons dated 29th May 2023 and the subsequent application for extension of time that was brought by way of Originating Summons dated 24th July 2024. There was also the Notice to Show Cause why the reference should not be dismissed. As mentioned earlier, I had given directions on the hearing of the Chambers Summons dated 29th May 2023 on the mistaken belief that it was the only application pending hearing. The advocates for the parties who were present were of no assistance to the court. Since the Applicant's application for extension of time brought by way of Originating Summons dated 24th July 2024 was filed through the Case Tracking System (CTS) and there was no hard copy in the file and the directions given on the same were also given in the same system without a hard copy of the order being placed in the court file, there was nothing before the court from which it would have known of this second application and the directions that had been given.
5. To cut the long story short, if the attention of the court had been drawn on 30th July 2024 to the Applicant's application for extension of time brought on 24th July 2024 by way of Originating Summons dated 24th July 2024, that is the application in respect of which the court would have given directions for hearing. The court would not have given directions for the hearing of the Chambers Summons dated 29th May 2023 while there was a pending application for an extension of time so that the said application could be deemed to have been filed within time. It follows therefore that the directions that were given by the court on 30th July 2024 were given by mistake arising from lack of adequate information on the issue that was at hand.
6. That being the case, I am unable to write the ruling on the Chamber Summons dated 29th May 2023. In their response, the Respondents' have responded to the application for extension of time and the Notice to Show Cause rather than to the Chamber Summons dated 29th May 2023. The Respondents have contended that the Chambers Summons dated 29th May 2023(the reference) was not served upon them by the Applicant. In their submissions, they have also submitted on the Applicant's application for extension of time brought on 24th July 2024 by way of Originating Summons dated 24th July 2024 and/or the Notice to Show Cause instead of the Chamber Summons dated 29th May 2023 in respect of which directions were given. On his part, the Applicant filed no submissions.
7. Given the foregoing state of affairs, it would not be in order to write a ruling on the Chamber Summons dated 29th May 2023. I will in exercise of the inherent powers of the court set aside the directions given on 30th July 2024 regarding the hearing of the Applicant's Chamber Summons application dated 29th May 2023 which I hereby do. I will give further directions on the matter upon hearing from the parties.

DATED AND DELIVERED AT KISUMU ON THIS 20TH DAY OF JANUARY 2025

S. OKONG'O

JUDGE

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**



N/A for the Applicant

Ms. Mawinda for the Respondents

Ms. J. Omondi-Court Assistant

