



**Mmbone & another v Enock (Environment and Land Appeal  
E011 of 2023) [2025] KEELC 7269 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7269 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND APPEAL E011 OF 2023  
EC CHERONO, J  
OCTOBER 23, 2025**

**BETWEEN**

**FLORENCE MMBONE ..... 1<sup>ST</sup> APPELLANT**

**JOHANNES WANJALA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**EMILY NAFULA ENOCK ..... RESPONDENT**

**RULING**

1. The Applicant, Florence Nafula MMBone moved this Honourable court vide a Notice of Motion application dated 30<sup>th</sup> June 2025 seeking the following orders;
  1. (Spent)
  2. That the application dated 22;04;2025 be reinstated for hearing and determination.
  3. That the costs of this application be provided for.
2. The said application is based on grounds that the dismissal of the application dated 22/04/2025 was erroneous as the application was not coming up for hearing but mention to confirm filing of submissions and that the Applicant had filed her submissions as directed by the court. She stated that her Advocate on record informed her which information she believes to be true that he had internet challenges logging in during the mention date and on the same date and that they found out from the court tracking system (CTS) later that their application had been dismissed for want of prosecution.
3. The Applicant further deposed that she has been informed by her Advocate on record and she believes it to be true that their failure to attend court for mention on 22/05/2025 was not deliberate and that the present application is made without unreasonable delay and in good faith.



4. The plaintiff/Respondent through the Firm of Makokha Wattangah & Luyali Associates filed a Replying affidavit sworn on 10<sup>th</sup> July, 2025 in opposition to the application. According to the Respondent, the current application has been filed after a period of one and a half months which delay is inordinate in the circumstances. She stated that the Appellant/Applicant's failure to attend court on 22/05/2025 was deliberate as he was aware of the date and his advocate on record is the one who served her advocate on record with the order to attend court on 22/05/2025. She further deposed that allowing the present application is a waste of the Court's time and that this court is functus officio and the Appellant has remedy to move the court of appeal for the stay orders
5. I have considered the application, the supporting affidavit, the Replying affidavit, the court record generally and the submissions by the Applicant. It is on record that when the Notice of motion dated 22<sup>nd</sup> April 2025 came up for directions on 22/05/2025, neither the parties nor their advocates were present. The Applicant in his supporting affidavit deposed that his advocate informed him that he had challenges logging in virtually. The Applicant further stated that this court had given directions on the hearing of the Notice of Motion application dated 22/04/2025 and that the matter was coming up on 22/05/2025 to confirm compliance and taking a ruling date.
6. Though this case was coming for mention on 22/05/2025, that mention was for purposes of consolidating the hearing of the Notice of Motion application dated 22/04/2025. The purpose of the mention was to confirm compliance of the directions given by the court and taking a Ruling date. A mention to confirm compliance of directions on the hearing of an application is deemed as a further hearing of the application. It is only after taking a Ruling date that the application is deemed to have been heard. It follows therefore that when the Applicant failed to attend court for mention on the said 22<sup>nd</sup> May 2025, this court rightly dismissed the said application for want of prosecution. The argument by the Applicant that the said dismissal was erroneous cannot be correct.
7. Be that as it may, the Applicant has explained that his advocate on record informed him that he could not log in virtually due to internet challenges. Though that cannot be verified as Counsel did not swear an affidavit, the explanation in my view is plausible. I also note that the Applicant took prolonged period to file this application. If the advocate for the applicant indeed had challenges logging in virtually and after finding out later that the application was dismissed for want of prosecution, why did the Applicant take more than one and a half months to bring the present application? These are pertinent questions that beg for answers but in the interest of justice, I reluctantly allow the application on the following terms;
  1. The Notice of Motion application dated 22/04/2025 dismissed for want of prosecution on 22/05/2025 be and is hereby reinstated.
  2. The Applicant to pay the Respondent thrown away costs of Kenya Shillings five thousand (KSHS. 5000/-) within 7 days from the date of this Ruling.
  3. The parties to forthwith take further directions on the hearing and determination of the said application dated 22/04/2025.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025**

**HON. EC CHERONO**

**ELC JUDGE**

In the presence of;

Mr. Athunga for the Applicant.



M/S Nekesa HB for Wattangah for the Respondent.

Bett C/A.

