



**Ntumari v Momanyi (Environment and Land Miscellaneous Case  
E007 of 2025) [2025] KEELC 7167 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7167 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E007 OF 2025**

**MN MWANYALE, J  
OCTOBER 23, 2025**

**BETWEEN**

**TEIYAI OLE NTUMARI ..... PLAINTIFF**

**AND**

**PAUL OSORO MOMANYI ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of the Notice of Motion application dated 7<sup>th</sup> July 2025 seeking to set aside, vacate and/or vary the Exparte proceedings of 3<sup>rd</sup> July 2025 which dismissed to Motion application dated 23.05.2025 and reinstate the same.
2. The Application seeks an additional prayer of maintenance of status quo so as to prevent the Respondent from evicting the Applicant from Transmara/Moita/32.
3. Grounds in support of the application are interalia that; -
  - i. The application dated 23.05.2025 was scheduled for interparty hearing by way of oral submissions on 3<sup>rd</sup> of July 2025.
  - ii. Due to a power black out in the Applicants Advocate chambers, there was internet challenges resulting into the failure by counsel to log into the court session.
  - iii. Applicant is desirous of having the matter heard on its merits and there is a grave danger that the Applicant will face eviction in view of the decree by the trial court, hence the need to set aside the orders Ex-debito justice.
4. Application is supported by the supporting affidavit of O.M Otieno Esquire Advocate who reiterates the grounds in support of the application and has annexed the direction issued in relation to the oral hearing of the application dated 23.05.2025.



5. In opposition to the application a Replying affidavit by the Respondent Paul Osoro Momanyi, who depones interalia; -
  - i. That it was not plausible that the counsel lacked an alternative internet network or device hence the failure to attend court was not excusable but lacks of diligence.
  - ii. That applicant has habitually sought to delay the matter and is frustrating the Respondent from enjoying the fruits of the judgment.
  - iii. That the application is overtaken by event as the suit property was transferred to a third party who purchased it.
6. Application was canvassed by written submission, which both parties filed and the court has taken into consideration.
7. Upon consideration of the application the rival affidavit and submissions, the court frames the only issue as to whether or not the application is merited?
8. The application seeks exercise of discretion so as to set aside the proceedings of 3<sup>rd</sup> July 2025, on grounds of non-attendance of the Applicant and/or his counsel on the virtual court platform to orally submit on the application dated 23.05.2025. The reason being that the Advocates chambers had a black out and there was no internet connection to enable the Advocate participate virtually on the date appointed for hearing.
9. The court finds the reason advanced to be reasonable in this digital era where court proceedings are being held on the court's virtual system and the application having been made timeously is thus merited and accordingly the same is allowed.
10. The application dated 07.07.2025 is allowed in terms that the dismissed application dated 23.05.2025 is hereby reinstated and shall be heard by way of oral submissions on 28<sup>th</sup> October, 2025 at 8.30 am.
11. The Respondent is awarded thrown away costs of Kshs.10,000/= in any event.

**DATED AT KILGORIS THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Otieno for the Applicant

Mr. Nyasimi for the Respondent

