



Omosa (Suing as the administrator and legal representative of the Estate of Kasmir Mekenye Omete) v County Government of Kisii (Environment and Land Case 17 of 2019) [2025] KEELC 7263 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7263 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE 17 OF 2019
M SILA, J
OCTOBER 21, 2025

BETWEEN

GEOFFREY MEKENYE OMOA (SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF KASMIR MEKENYE OMETE) PLAINTIFF

AND

COUNTY GOVERNMENT OF KISII DEFENDANT

RULING

(Application for reinstatement of dismissed suit and counterclaim; both suit and counterclaim dismissed for non-attendance; parties earlier having mentioned that they were ready to proceed and court allocating time for hearing; at the appointed time, only counsel for plaintiff present and now seeking adjournment on reason that the plaintiff is absent; defendant and her counsel not appearing at all; court not persuaded to adjourn and both suit and counterclaim dismissed; on application for reinstatement, court not persuaded to reinstate; court not persuaded that both plaintiff and defendant have given a genuine reason for non-attendance of their clients at the appointed time; right to hearing also carries a corresponding duty on the part of the litigants to appear in court at the appointed date and time; applications dismissed)

1. I have two applications before me. The first application is dated 26 March 2025 filed by the plaintiff. He seeks an order to set aside the orders made on 12 March 2025 which dismissed his suit for non-attendance and seeks that his suit be reinstated. The second application is that dated 1 July 2025 filed by the defendant. She seeks that the orders made on 12 March 2025 dismissing her counterclaim for non-attendance be set aside and the counterclaim be reinstated. It will thus be seen that each party wants her suit reinstated.



2. The background to the two applications is that on 28 October 2024, the hearing date of 12 March 2025 was given in the presence of counsel for the plaintiff though counsel for the defendant was absent. On the 12 March 2025, when the case was first mentioned, Ms. Chepkorir, learned counsel for the plaintiff, mentioned that she was ready to proceed with one witness. Ms. Bonareri, learned counsel for the defendant, also stated that she was ready with one witness. I directed that the case be heard at 11.00am in open court.
3. Shortly after 11.00am, at 11.04am to be precise, Ms. Chepkorir was present for the plaintiff but Ms. Bonareri was absent. I saw that the case had already been assigned for 11.00am which was past and directed the matter to proceed. Instead of proceeding, Ms. Chepkorir now applied for adjournment, stating that though she had earlier stated that her client was present, he was actually not present. She stated that she had been informed that her client's wife had given birth. I was not persuaded to adjourn. I pointed out that it had earlier been mentioned that the plaintiff was present. I also thought that the mere fact that his wife has given birth is by itself not a reason to adjourn. I proceeded to dismiss his case. The defendant was equally not present and I also dismissed the counterclaim. I directed each party to bear their own costs.
4. Though I did not specify the precise order under which the suit was dismissed, it should be considered that the suit and counterclaim were dismissed pursuant to Order 12 Rule 1 which states as follows :

When neither party attends [Order 12, rule 1.]

If on the day fixed for hearing, after the suit has been called on for hearing outside the court, neither party attends, the court may dismiss the suit.
5. Given that both plaintiff and defendant were absent to present their respective cases at the appointed time for hearing of the suit, I am persuaded that the court was perfectly within its discretion in dismissing both suit and counterclaim under Order 12 Rule 1.
6. Now, both parties have come to court seeking reinstatement of their dismissed suits. To the plaintiff's application, the defendant has filed a reply to state that she has no objection to his suit being reinstated on condition that her counterclaim is also reinstated. In essence, none is opposing the other party's application, but I think I need to be persuaded that the applications are merited.
7. In the application filed by the plaintiff, he has deposed that he could not make it to court because he was away in Bungoma attending to his sick wife who had just given birth. There is however nothing annexed to his affidavit to demonstrate that he was actually in Bungoma, or that his wife had given birth, or that his wife was sick. It is an empty statement that is completely unsupported by any evidence. Even the name of his wife is not disclosed. I am afraid that without proving the allegation that he was actually attending to his sick wife who had just given birth, the plaintiff has not given me good reason to set aside the order that dismissed his suit for failure to attend court.
8. Let me now turn to the application by the defendant. It is merely said that the defendant and her witnesses could not make it to court in time. It is not said what held them up and why they could not make it to court at the appointed time. It is also not said why they did not reach out to inform court that they were running late. Without giving a genuine reason for not making it to court at the appointed time, I again do not see any good reason for setting aside the order dismissing the counterclaim. It is not even said what time, if at all, the counterclaimant eventually made it to court. The counterclaimant knew the time set aside for hearing but failed to attend court. There is no good reason given to court as to why the defendant failed to attend court at the appointed time and I am not therefore moved by the defendant's application.



9. In short, I am not persuaded that the parties have presented any good reason to warrant a setting aside of the orders made on 12 March 2025. They simply failed to appear to prosecute their respective cases. A message needs to be sent that cases are not just filed so that they can be parked in court. It is the duty of the parties to prosecute their cases and it is the duty of parties and counsel to attend court at the time appointed by court. This matter was filed in May 2019 and was in court for about 6 years when it was dismissed. The hearing date of 12 March 2025 had been given on 28 October 2024 which was more than 4 months prior. Surely, in those circumstances the parties had a duty to appear in court on the appointed day at the appointed time to prosecute their cases. Failing to turn up for hearing and then creating excuses, so that cases can just drag on and on in court is not good enough.
10. In the submissions of counsel for the plaintiff, it is impressed that parties have a right to be heard. That is true. The parties have a right to be heard but they have a corresponding duty to attend court so that they can be heard. The right is vested in them but they have a part to play in the realization of that right. If they do not play their part they cannot contend that they have been denied a right to be heard.
11. I therefore proceed to dismiss both application dated 26 March 2025 and 1 July 2025. There will be no orders as to costs.
12. This being a dismissal under Order 12 Rule 1 if the parties are so inclined, they can exercise their option under Order 12 Rule 6 (1) to commence a fresh suit.
13. Orders accordingly.

DATED AND DELIVERED THIS 21 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT KISII

Delivered in the presence of :

Mr. Matara for the plaintiff

Ms. Bonareri for the defendant

Court Assistant – Michael Oyuko

