



Oyatsi & 2 others v Vaz & 3 others (Environment and Land Case 22 of 2021) [2025] KEELC 7581 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7581 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 22 OF 2021
FM NJOROGE, J
NOVEMBER 5, 2025**

BETWEEN

DESTERIO ANDADI OYATSI & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS APPLICANT

AND

PETER IGNATIUS VAZ & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS RESPONDENT

RULING

1. The motion of 8th August 2025 seeks to set aside the orders made on 3rd February 2025 which dismissed the suit for want of prosecution, and that the suit be reinstated for hearing on its merits. The motion is supported by the sworn affidavit of Elizabeth Klem, one of the executors of the estate of Nicholas Kiprono Biwott.
2. The grounds on which the application is premised are in the application and in the supporting affidavit. The grounds are that at all material times the plaintiffs were justified in not actively prosecuting the main suit during the period pending the hearing and termination of COA C.A. No E035 OF 2022 which had been filed by the 2nd defendant herein against them, and which was dismissed on 21st February 2025. The suit was thus dismissed for want of prosecution before the judgment in that appeal was delivered. It was upon the dismissal of the appeal that the plaintiffs through their advocate sought a mention date for directions as to how this suit should proceed.
3. Whilst following up on the mention date, they learned that the matter had come up for a notice to show cause on 3rd February 2025, and the suit was dismissed for want of prosecution on that date. They aver that they were not properly served with the notice to show cause. For those reasons they seek that the suit be reinstated for hearing on its merits. The application is unopposed.



4. I have gone through the file record of the instant case and established that the suit was indeed dismissed for want of prosecution on 3rd February 2025. The notice to show cause is in the court file. There is however no indication on its face that it was received by the advocates for the plaintiffs in the matter.
5. I have also noted in the eKLR that the judgment of the Court of Appeal on the appeal filed by the 2nd defendant was delivered on 21st February 2025.
6. In this court's view, the dismissal of the suit should have waited for at least one year after the Court of Appeal judgment. There was however no representation in court for any of the parties on the date of dismissal from whom the court could have learnt that the matter was awaiting the decision on an appeal related to it; consequently, the court dismissed the suit. It would not have dismissed it had the facts been laid before it regarding the pendency of the appeal.
7. I find that the applicants have established a good case for setting aside the orders made on 3rd February 2025 hence the application dated 8th August 2025 is therefore granted in terms of prayer numbers 1 and 2 thereof. The cost of the application shall be in the cause. This matter shall be listed for directions on 3/2/2026 for pre-trials.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 5TH DAY OF NOVEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

