



Onchari & 14 others v National Land Commission & 3 others (Environment and Land Petition E009 of 2021) [2025] KEELC 7689 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND PETITION E009 OF 2021**

M SILA, J

NOVEMBER 4, 2025

BETWEEN

EDWARD NYAKUNDI ONCHARI & 14 OTHERS & 14 OTHERS PETITIONER

AND

**THE NATIONAL LAND COMMISSION 1ST RESPONDENT
PRINCIPAL SECRETARY, MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY 2ND RESPONDENT
THE CHAIRMAN/SECRETARY, BOARD OF MANAGEMENT KEROKA TECHNICAL TRAINING INSTITUTE 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. The application before me is that dated 24 June 2025 filed by the petitioners. The substantive order sought is that this petition, which was dismissed for non-attendance on 4 June 2025, be reinstated for hearing. The application is opposed.
2. To put matters into perspective, this suit was commenced through a petition filed on 22 June 2021. The petitioners claim to be from two clans namely Abasigisa and Abamobebe in Keroka Sub-County and owners of the Plots No. 734, 744, 745, 746, 747, 749, 754, 755, 756, 757, 952, 953, and LR Nos. Nyaribari Masaba/Bomobebe/1116, 1862, 1867 and 2344. Their case was that the two clans were persuaded to donate land for the establishment of Keroka Technical Training Institute in 1990, but they were not compensated. In the suit, they asked for orders for a permanent injunction against the respondents in respect of the suit properties, mandamus to compel the respondents to compensate them, and any other relief the court may deem fit.



3. The 2nd, 3rd, and 4th respondents filed a response to the petition and also filed a cross-petition. They admitted that there was a meeting in 1988 and 1990 but denied that there was any promise of compensation made. They pleaded that the two clans voluntarily donated the unoccupied hilly parts of their parcels of land in order to put up a resource centre which later became Keroka Institute. They contended that this was purely a community initiative. They averred that the petitioners are mostly sons and daughters of the original land donors who are deceased and they are taking advantage of the institution having grown from a resource centre to a Technical Institute to advance their selfish interests. In the cross-petition they asked for a declaration that the suit properties are public land, an order to compel the petitioners to surrender their title deeds and execute transfer, and a permanent injunction to restrain the petitioners from the suit properties.
4. On 8 February 2023, I gave directions that the petition be heard through viva voce evidence and directed parties to file their witness statements and documents within 21 days. I listed the matter for hearing on 10 July 2023. I adjourned on 10 July 2023 as it was said that the 1st respondent was not served and also that counsel for the petitioners was unwell. I directed the case be heard on 13 December 2023. On 13 December 2023, Mr. Ondieki, learned counsel for the petitioners, sought an adjournment to file further documents and amend the petition. I gave them an adjournment and directed the case be mentioned on 7 May 2024. On 7 May 2024, Mr. Ondieki mentioned that he needed more time to engage a surveyor and asked for two weeks to file his documents. I gave Mr. Ondieki the two weeks that he requested to file his reports and directed that the matter be mentioned on 13 June 2024. On 13 June 2024 Mr. Ondieki did not appear in court. I gave a hearing date of 22 October 2024. On that day, Mr. Ondieki stated that he was not ready to proceed because he had filed an application dated 4 October 2024 for orders for a valuer to access the suit properties. He had also not filed any survey report. My own view was that there had been adequate time to undertake any survey or valuation of the properties. I reluctantly adjourned and it was agreed that the petitioners can access the properties on 28 October 2024 to undertake the survey and valuation exercise. I directed the matter to be mentioned on 14 November 2024. What happened thereafter is that Mr. Ondieki filed an application to cease acting which I allowed on 4 February 2025. I directed the matter be mentioned on 12 March 2025 and directed counsel for the 2nd – 4th respondents to serve a mention notice directly upon the petitioners. The 1st petitioner was served but there was no appearance on 12 March 2025 for either of the petitioners. I fixed the case for hearing on 4 June 2025.
5. On 4 June 2025, Mr. Mekenye, learned counsel, appeared and stated that he has been given instructions to appear for the petitioners. He asked for an adjournment. His reasons for adjourning was that he found that there was no response to the cross-petition; that the 2nd and 7th petitioners have since become the witnesses of the 2nd and 3rd respondents thus need to amend; that he was informed that survey and valuation was to be done and they were in the process of procuring the services of a surveyor and valuer. He asked for more time to iron out these issues. Mr. Ndiritu, learned state counsel for the 2nd – 4th respondents did not oppose the motion.
6. I was not persuaded to adjourn the matter. I observed that the hearing date was given more than 3 months back. My view was that the petitioners had been given more than sufficient time to put their house in order. I noted that they had earlier been indulged on 22 October 2024 when I reluctantly adjourned. Mr. Mekenye then stated that he has one witness to proceed virtually. I directed that we proceed for hearing virtually at 11.00am.
7. Later at 11.15am Mr. Mekenye pronounced that he was unable to get in touch with his clients. He proposed to proceed by way of submissions but I pointed out to him that directions had already been given for the matter to proceed by way of viva voce evidence. He thereafter left it to court. I duly



proceeded to dismiss the petition for non-attendance. There was also non-attendance on the part of the cross-petitioners and I also proceeded to dismiss their cross-petition for non-attendance. I made no orders as to costs.

8. Subsequently, this application was filed and it will be seen that it is an application to reinstate the dismissed petition. The supporting affidavit is sworn by Edward Nyakundi Onchari, the 1st petitioner. He has deposed that they were previously represented by M/s David Okoyo Ondieki & Company Advocates who ceased acting, and on 2 May 2025, they appointed the law firm of M/s Owuondo Obinchu & Co Advocates. He deposes that after taking instructions, they discovered that the matter was scheduled for hearing on 4 June 2025. He deposes that counsel discovered that he had not recorded a statement and cast doubt on the veracity of a witness statement filed on 6 July 2021. He deposes that he repudiated that witness statement as not reflecting the true facts presented to counsel and there was necessity to amend the witness statement and the petition. He deposes that his new counsel also discovered that no reply had been filed to the cross-petition, and also noted that the 2nd and 7th petitioners had defected and were listed as witnesses of the respondents. He deposes that their new counsel established that they had failed to comply with court directions on filing of survey and valuation reports. That due to these fundamental procedural deficiencies, their counsel engaged opposing counsel, Mr. Wabwire, and they mutually agreed to remove the matter from the cause list to enable proper preparation. He deposes that despite these compelling circumstances, the court declined the application for adjournment and proceeded to dismiss the suit. He deposes that there existed sufficient and compelling cause why the suit ought not to have been dismissed, particularly given the change of counsel and the need to address the fundamental procedural irregularities. He deposes that they were denied their constitutional right to be heard having been prejudiced by the acts and omissions of their former counsel. He deposes that the dismissal of the suit will occasion them irreparable prejudice as they are the registered proprietors of the subject parcels of land and that reinstatement will not prejudice the respondents.
9. The 2nd – 4th respondents oppose the application through the replying affidavit of Benster Maronga Obobe, the Principal of the 3rd respondent, Keroka Technical Training Institute. He deposes inter alia that the application does not disclose tangible, sufficient and/or compelling reasons, as set out under the law to warrant review or setting aside of the dismissal order. He deposes that even though the applicant has tried to put blame on the previous Advocate on record, he has conveniently failed to disclose to the Honourable court the following :
 - (a) That the previous Advocate on record ceased acting in this matter through a formal application on 4th day of February 2025 which fact is well within the petitioners' knowledge.
 - (b) That apart from being aware of their Advocate having ceased to act for them in this matter, the lead petitioner herein has failed to disclose that he had a tele-conversation with the respondents' Advocate on 4th February ,2025 at around 18:40 where he was advised to get another Advocate.
 - (c) That the petitioners had a period of over four good months to prepare for their case hence if they elected to appoint an Advocate on 2nd May, 2025 then they have themselves to blame.
 - (d) In the supporting affidavit the lead petitioner has conveniently failed to disclose to the Honourable court that on 2nd day of June,2025 when his Counsel reached out to Mr. Wabwire (learned State Counsel acting for the 2nd – 4th respondents), he was promptly referred to the counsel handling the matter since Mr. Wabwire was in Naivasha during that period.



- (e) The applicant has not disclosed to the court what his counsel was told by the respondents advocate who was in conduct of the subject matter on that very day.
- (f) Consequently, Mr. Wabwire who was away on official duties could not have mutually consented to any alleged adjournment hence the said averment in the supporting affidavit is false and an afterthought.
10. He has also given the history of the case and pointed out that on numerous occasions the petitioners were given time to file their documents which they failed to do. He has also added that the petitioners were not in court when the case was for hearing. He deposes that the conduct of the petitioners shows that they have never been keen to prosecute the matter. He avers that the issues arose in 1990 and the petition was filed in 2021 and many of the respondents' witnesses are sickly and have lost memory. He avers that the order of review and/or setting aside of a dismissal order is not a right of a party, but an equitable remedy only available to a deserving party at the discretion of the Honourable Court, which certainly the petitioners herein do not deserve at all. He deposes that litigation must come to an end and reopening the suit will prejudice the respondents.
11. Mr. Mekenye filed submissions to support the motion whereas Mr. Wabwire, learned State Counsel, fully relied on the replying affidavit.
12. I have given the application due consideration.
13. I have already set out the history of the case above. It was filed in 2021. Directions were given for the matter to proceed by way of viva voce evidence and the petitioners had earlier been given a hearing date but they failed to proceed because they said they need to file more documents. Time to file these documents was given but nothing was filed. The petitioners' erstwhile counsel ceased acting on 4 February 2025 and the petitioners were directly served to attend court for mention on 12 March 2025. They did not attend. If they needed more time, one would have expected them to attend court on 12 March 2025 at the mention for them to plead their case. Instead, they chose to absent themselves. It is on that date that the hearing date of 4 June 2025 was given. The petitioners acknowledge being aware of this date and they say that they appointed counsel on 2 May 2025. Still there was a whole month in between to file any documents, file any more witness statements, or even apply to amend the petition. No such action was taken. Instead, the petitioners' counsel asked for adjournment on the day of hearing and I have already said that I was not persuaded by their reasons. But even more importantly, the petitioners were nowhere to be seen on the hearing date. They never availed themselves to court nor availed themselves to their counsel. They simply went missing and yet this was on the day of the hearing of the petition. They could as well have attended court and at the hearing of the case clarified any deficiencies in the documents of their case. The case was to be heard by viva voce evidence, and not through witness statements or affidavit evidence, so any defect in these would not count for much since they would have presented their evidence orally in court. If they thought that the case they filed was not properly presented, the option to withdraw and then come back to court when ready was also there.
14. The reasons put forth to support this application are the same reasons that I did not find merit in when I dismissed the petition for non-attendance. There is nothing new that is being said. Most significantly, the deponent of the supporting affidavit has said nothing as to why he or the other petitioners were not present in court on 4 June 2025. In other words, they have given absolutely no reason for their personal failure to attend court for the hearing.
15. I find it interesting that the petitioners have the audacity to say that they were denied a right to be heard. How can they say that they were denied the right to a hearing when they themselves failed to attend court for the case to be heard? How can they contend that they were denied a right to be heard



when they were given lots of time to put their house in order and even given a date for hearing? It was now their duty to exercise that right to be heard by filing their documents and attending court for the hearing. The most that a court can do in facilitating the right to be heard is to give you a hearing date; now it becomes the duty of the litigant to appear in court and exercise that right to be heard. If a litigant fails to appear in court upon being given a hearing date, he cannot be heard to complain that the court failed to allow him exercise his right to be heard. In other words this right to be heard also carries with it a duty on the litigant to appear in court so that he can be heard.

16. The history of this case speaks for itself. The petitioners were given numerous opportunities to provide their evidence and attend court for hearing but they failed to seize these opportunities. In fact, it is as if they filed the petition, then started going on a fishing expedition looking for evidence. I would have thought that you first find your evidence, put it together, then present your case. You cannot park a case in court to the detriment of the other party while you take your time looking for evidence. We cannot also escape the fact that the petitioners were nowhere to be seen on 4 June 2025. Clearly, they did not think that attending to the hearing was of any importance to them and yet this was a matter that they themselves filed in court. In their view, there was more important business to do on the day rather than attending to the hearing of their case. If one is not ready to prosecute their case, they should be gracious enough to withdraw it, and when they are ready, file a new case. A strong message needs to be sent that the court is not a parking lot for cases with no intention to prosecute them. You file a case with intent to prosecute it not to simply leave it lying in the court registries.
17. I think I have said enough to demonstrate that I am not persuaded to review my orders of dismissal of the petition and cross-petition. My orders of 4 June 2025 stand.
18. There is no merit in this application and it is dismissed with costs.
19. Orders accordingly.

DATED AND DELIVERED THIS 4TH DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Mr. Mekenye for the petitioners

Mr. Wabwire for the 2nd – 4th respondents

N/A for the 1st respondent

Court Assistant – Michael Oyuko

