

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELC APPEAL No. 1 OF 2021

VINCENT ORINDO NYAMBANE 1ST
APPELLANT

ALFRED MOFFARD OMUNDI MICHIRA 2ND
APPELLANT

VERSUS

DANIEL NYANGARESI ORINDO 1ST
RESPONDENT

CHARLES ARASA ORINDO 2ND
RESPONDENT

AND

DANIEL NYAMBANE MOKAYA
OBJECTOR

RULING

1. This Court (differently constituted) delivered judgment herein on 17th November 2022. The Court dismissed the appeal with costs. Thereafter, the Respondents filed a bill of costs which was taxed at KShs 489,710 and a certificate of taxation issued on 1st November 2023. The Respondents then embarked on execution to recover the costs.
2. Later, Daniel Mokaya Nyambane, the Objector, commenced objection proceedings in respect of the execution by the

Respondents. He also filed Notice of Motion dated 11th June 2024, through which he sought an injunction to restrain the Respondents in the appeal from interfering in any manner with land parcel number East Kitutu/Kibirichi/794 pending determination of the appeal. He also sought compensation from the Respondents for destruction of his trees and houses. He stated that the destruction occurred on 27th February 2024.

3. Notice of Motion dated 11th June 2024 came up for hearing on 25th March 2025. There being no appearance by the Objector/Applicant and being satisfied that he had been notified of the date, the Court dismissed it for non-attendance.
4. The Objector/Applicant then filed Notice of Motion dated 4th April 2025, under Certificate of Urgency, through which he sought setting aside of the order of dismissal which was made on 25th March 2025. The Court gave directions dated 4th April 2025 for filing and exchange of responses and submissions and scheduled the matter for mention on 14th May 2025 with a view to further directions or fixing date of ruling.
5. Come 14th May 2025, there was again no appearance by the Objector/Applicant. The Court dismissed Notice of Motion dated 4th April 2025 for non-attendance.
6. Undaunted, the Objector/Applicant filed Notice of Motion dated 4th June 2025, which is the subject of this ruling. He sought setting aside of the order of 14th May 2025 and reinstatement

of Notice of Motion dated 4th April 2025. The Court gave directions dated 4th June 2025, requiring service of the application forthwith on all parties and scheduling it for inter parte hearing on 18th June 2025.

7. Later on 18th June 2025, counsel for the Objector/Applicant did not have any evidence of service of the application upon the Appellants. He sought an adjournment and the Court granted his request, rescheduling the application for hearing on 18th September 2025, with an order that hearing notice be served.
8. Come 18th September 2025, counsel for the Objector/Applicant did not again have any evidence of service. He sought another adjournment. The Court granted the last adjournment, scheduled the application for hearing on 14th October 2025, condemned the Objector/Applicant to pay Court Adjournment Fees and once again ordered that hearing notice be served.
9. On 14th October 2025, counsel for the Objector/Applicant did not have any evidence of service upon the Respondents. He sought yet another adjournment. Owing to the failure to serve the Respondents, and in view of the previous order of last adjournment, the Court dismissed Notice of Motion dated 4th June 2025 in so far as the Respondents were concerned. Thus, this ruling is only as between the Objector/Applicant and the Appellants.

10.I note that the Appellants have not filed any response to the application.

11.I have carefully considered Notice of Motion dated 4th June 2025 together with the supporting affidavit. The only issue for determination is whether the application should be allowed.

12.When considering an application for setting aside, the Court is called upon to exercise discretion pursuant to the principles laid down in **Mbogoh & Another v. Shah [1968] EA 93** and reiterated in **James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] eKLR**. The Court has unfettered discretion and will consider such factors as the reason for the failure to attend Court, the length of time that has elapsed since the dismissal, the respective prejudice each party is likely to suffer and whether it is in the interest of justice to grant setting aside. The Court's discretion is to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake, but not to assist a person who has deliberately sought to obstruct or delay the cause of justice.

13.I note that the series of applications for setting aside herein, if allowed, would lead to reinstatement of Notice of Motion dated 11th June 2024, through which the Objector/Applicant sought orders of injunction and compensation against the Respondents. Given the foregoing background, and in view of the order of 14th October 2025, the Respondents are beyond

the scope of Notice of Motion dated 11th June 2024 for the reason that the application for setting aside was dismissed as against them.

14. A Court of law does not act in vain and does not issue orders in disputes that are moot. As the Supreme Court stated in **Dande & 3 others v Inspector General, National Police Service & 5 others (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) (16 June 2023) (Judgment)**, a matter is moot when there exists no live controversy with the result that the court's decision would not have the effect of resolving any actual and present controversy. Even if I were to grant setting aside as sought, it would amount to nought since the Objector/Applicant can no longer pursue his objection proceedings against the Respondents.

15. In view of the foregoing discourse, the Objector/Applicant has not persuaded me to exercise discretion in his favour. I find no merit in Notice of Motion dated 4th June 2025. I dismiss the application with no order as to costs since the Appellants did not resist it.

Dated, signed, and delivered at Nyamira, this 26th day of November 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

No appearance for the Appellants

Mr Meroka for the Respondents

Mr Sagwe for the Applicant

Court Assistant: B Kerubo