



**Deen v Nazirdin (Environment and Land Case 115 of 2018)
[2025] KEELC 18356 (KLR) (17 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 115 OF 2018
SM KIBUNJA, J
DECEMBER 17, 2025**

BETWEEN

ARFA PARVIN DEEN PLAINTIFF

AND

MOHAMED FAROOK NAZIRDIN DEFENDANT

RULING

Notice of Motion Dated 15th July 2025

1. The plaintiff filed the application dated 15th July 2025, seeking for orders among others that:
 - a. Ms. Ahmednasir Abdullahi Advocates LLP to be granted leave to come on record for the plaintiff.
 - b. The order of 21st June 2022 dismissing the suit for want of prosecution be set aside.
 - c. The suit be re-instated.
 - d. The plaintiff be granted leave to amend the plaint dated 16th May 2018.
 - e. Costs be borne by the defendant/respondent.

The application is based on the sixteen (16) grounds on its face marked (1) to (16) respectively and supported by the affidavits of Aefa Parvin Deen, sworn on 15th July 2025 and 7th October 2025, inter alia deposing that she is the administrator of the estate of the late Mohamed Deen, holder of 40 per cent joint owner of LR, No. LT 21 Folio 732 File 1230 (Subdivision No. 771/1/MN, suit property, by virtue of grant of probate issued on 30th August 1993; that she filed this suit to compel the defendant to agree they sell the suit property and share the proceeds in accordance with their respective shares, which the defendant opposed and filed a statement of defence; that defendant and herself agreed to pursue an out of court settlement, which decision was communicated to the court on 2nd August 2018; that their



negotiations culminated into a deed of settlement dated 5th September 2018, which clearly stipulated the terms of sale of the suit property and equitable distribution of the proceeds in accordance with their shareholding interests, and that a consent was to be executed and filed in court; that has been made to believe by her then advocates that the consent had been filed in court and adopted, but when she sought independent legal advice and perused the record, she learnt the suit was dismissed for want of prosecution on 21st June 2022; that she appointed the current advocates with instructions to file the instant application, and should be allowed as the defendant will not be prejudiced.

2. The application is opposed through the replying affidavit of Mohamed Farook Nazirdin, the defendant, and Aamir Zahid, advocate, sworn on 30th July 2025 and 2nd October 2025, respectively, inter alia deposing that the deed of settlement that they arrived at after negotiations was filed in court on 13th February 2020, and both parties authorised Coral Property Consultants Ltd to market the property and seek potential buyers but the plaintiff has never taken any steps to help; that as parties had agreed to withdraw from active litigation, the dismissal of the suit for want of prosecution was irrelevant as the matter has been voluntarily settled, and the application is without merit; that the plaintiff has not offered any reasonable explanation for the delay in filing the instant application of more than five years from the date of deed of settlement and two years from the dismissal of the suit, and should be dismissed with costs.
3. The learned counsel for the plaintiff and defendant filed their submissions dated 6th October 2025 and 15th October 2025 respectively, which the court has considered.
4. The issues that arise for the court's determinations are as follows:
 - a. Whether the court has met the threshold for the order of 22nd June 2022 dismissing the suit to be set aside and suit be reinstated.
 - b. Whether the plaintiff has met the threshold for leave to amend the plaint to be granted.
 - c. Who pays the costs?
5. The court has considered the grounds on the application, affidavit evidence, submissions by the learned counsel, superior court decisions cited thereon, the record and come to the following determinations:
 - a. The record confirms that the suit was commenced through the plaint dated the 16th May 2018, and was opposed by the defendant through the statement of defence dated the 22nd June 2018. A reply to the defence dated the 31st July 2018 was filed.
 - b. The matter was first listed on 17th May 2018 for mention before the Deputy Registrar on 2nd July 2018. Both parties were represented by counsel, and the matter was fixed for mention on 2nd August 2018. On that date, both parties were represented by counsel and it was set down for pre-trial on 21st September 2018. There is no indication on what happened on that subsequent date all the way to 21st June 2022, when the suit was dismissed for want of prosecution. The record confirms no party or counsel attended the court on that date though it is clear notices to show cause under Order 17 Rule 2 of the Civil Procedure Rules had been issued and service has not been contested. It is that order of 22nd June 2022 that the plaintiff seek to be set aside.
 - c. Though the parties have in their affidavit evidence referred to a deed of settlement dated 5th September 2018, that reportedly contains the terms of their agreements to settle this suit out of court, the record confirms that after the proceedings of 2nd August 2018, the next court appearance was 22nd June 2022 when the suit was dismissed. There is therefore no evidence that the said deed of settlement was ever filed with the court by any of the parties, and or adopted



as an order of the court before the Deputy Registrar or the Judge. It is therefore probable that the failure by the parties to take any other steps to prosecute the suit was because they believed they had settled the dispute or due to inadvertence on the part of their counsel to file the deed of settlement and seek for its adoption by the court.

- d. As it is apparent whatever the parties had agreed in their deed of settlement is yet to be complied with, it is only reasonable that the dismissal order be set aside and the suit be reinstated to give the parties an opportunity to file their consent/deed of settlement if any or prosecute the suit to its logical conclusion. I also find it fair to allow amendment of the plaint to enable all issues be raised and determined effectually.
 - e. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where ordered differently by the court for good reasons. In this instance I find it fair and just for costs to abide the outcome of the suit due to the parties familial relationship and to encourage them to explore out of court settlement.
6. In view of the foregoing determinations, the court finds and orders as follows:
- a. That the plaintiff's application dated 15th July 2025 has merit and is allowed in terms of prayers (2), (3), (4) and (5).
 - b. The amended plaint be filed and served within thirty (30) days from today.
 - c. The costs to abide the outcome of the suit.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 17TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the Presence of:

Plaintiff : Mr Athuman

Defendant : Mr Lilan for Said

Kalekye - Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

