



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLOS E017 OF 2023

DOUGLAS WANYAGA GICHUKI.....1ST APPLICANT
ESTHER NYAMBURA GIKONYO..... 2ND APPLICANT
VERSUS
CHURCH COMMISSIONER OF KENYARESPONDENT

RULING

- 1) This ruling is on the Notice of Motion dated 17-6-2025. The motion which is by the Applicants seeks the review, variation and setting aside of the order dated 18-2-2025.

- 2) The motion is brought under **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**, Orders 10 rule 11 and 51 rule 1 of the Civil Procedure Rules, **Articles 22, 25(c), 48, 50(1) and (2), 159(2) and 259** of the Constitution of Kenya and all other enabling provisions of the Law.

- 3) The Motion is based on eleven (11) grounds and is supported by the affidavit of the 1st Applicant dated 17-6-2025. The gist of the entire motion is as follows.
 Firstly, the dispute herein has been pending in court for the last twenty years. Secondly, when the matter came up for hearing on 18-2-2025, the Applicants' counsel withdrew the suit on the ground that the applicants had been evicted from the suit land and a church built thereon. Thirdly, this withdrawal happened without the knowledge of the Applicants. They only came to learn of the harsh reality when they engaged the new counsel. The harsh consequence of the error on the part of the advocate has been visited on the innocent Applicants. Fourthly, the reinstatement of the suit and hearing it on merit

will not prejudice the Respondents in any manner. Finally, the Applicants stand to suffer irreparable loss and damage if the application is not allowed.

- 4) The Motion is opposed by the Respondent whose counsel has filed Grounds of Opposition dated 15-7-2025 which are as follows.

Firstly, the application is a mischievous attempt to prolong litigation which has come to an end. Secondly, the application is belated and appears to be an afterthought. Thirdly, the suit was not settled by consent but by the Applicant's withdrawal of the same. Fourthly, reviving the suit will prejudice the respondent in view of the fact that the Applicants have already vacated the land and a church built thereon. Finally, there are other decrees in other cases like Murang'a SPMCC 126 of 1995, Murang'a CMCC 454 of 2014 and Kangema LDT Cause No. 17 of 2005 all appearing in the Respondent's trial bundle which are clear proof that the application is frivolous, vexatious and without merit.

- 5) Counsel for the Applicant in her written submissions dated 15-11-2025 identified three (3) issues for determination.

- i) Whether this Court has jurisdiction to set aside the withdrawal and reinstate the suit.*
- ii) Whether the withdrawal of the suit by the Applicants' former counsel was authorized.*
- iii) Whether the Applicants have demonstrated sufficient cause to warrant the reinstatement of the suit.*

I have not seen any written submissions filed by the Respondent's counsel.

- 6) I have carefully considered the motion in its entirety including the grounds, the affidavit by the 1st Applicant and the grounds of opposition. I find as follows on the issues raised by the counsel for the Applicants.

- 7) On the first issue of jurisdiction, I find that this Court has unfettered jurisdiction to do justice. This jurisdiction stems from Article 50(1) of Constitution of Kenya which provides for a fair hearing of any dispute that can be resolved by the application of the law, **Article 159(2)** which provides that the purpose and the principles of the constitution

shall be protected and promoted. These principles in Article 259 include developing the development of the Law. Even though Order 25 of the Civil Procedure Rules does not provide for the reinstatement of suits withdrawn by the parties or their advocates, the fact that it is not the Applicants who withdrew the suit but their advocate means that there is that probability that the Applicants were not aware of the withdrawal. If that were the case, then an injustice will have been occasioned on the applicants. Since the Civil Procedure Rules are subservient to the Civil Procedure Act and the Constitution, I find that they prevail over the Civil Procedure Rules. Condemning the applicants unheard in a case that involves land where they claim to have buried their dead is neither fair nor just.

8) On the second issue, I find that the deposition by the Applicants that they did not authorize their former counsel to withdraw the suit had not been controverted by the respondent.

Finally, I find that the Applicants have made a good case for the reinstatement of the suit because the Respondent will not suffer any prejudice because it too, will be heard.

Consequently, I allow the motion dated 17-6-2025. The only condition that I will impose is that this suit be prosecuted in the next six(6) months.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 15th day of December, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicants' Counsel – Miss Waringa Wahome

Respondent's Counsel – No appearance