

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC NO 18 of 2019**

**KAHINDI MENZA .....**  
**PLAINTIFF**

**VERSUS**

**MTAWALI YAA BAYA WARA .....**  
**DEFENDANT**

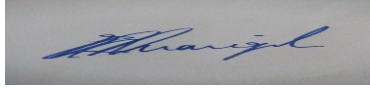
**RULING**

1. On 20<sup>th</sup> May 2025 the court ordered closure of the defendant case the absence of all the parties and ordered that submissions be exchanged within **28** days. The court also set down the matter for judgment for 30<sup>th</sup> September 2025.
2. The defendant, after those orders were issued, came up with an application dated 30<sup>th</sup> of May 2025, a date 10 days later, seeking and order setting them aside. In specific, he sought to set side the court order compelling the defendant's case to be closed, and prayed that he be allowed to reopen his case upon such terms and conditions as this Court may deem fit.
3. The grounds upon which the application is made are that the matter was slated for hearing of the defence case on 20<sup>th</sup> May 2025 and the defence case was closed by the court *suo moto*, without the defendant availing his witnesses or producing documents to support his case, and in the absence of the parties. The applicant stated that though that order was prompted by the absence of the defendant and his witnesses, it was his advocates on record who inadvertently misdiarized the hearing date and, instead of 20<sup>th</sup> May 2025, diarized the hearing for 28<sup>th</sup> May 2025. Come that latter date, the matter was not listed, and the counsel discovered that it had been called out on 20<sup>th</sup> May 2025. It is stated that the defendant was ready with his witnesses for hearing on 28<sup>th</sup> May 2025

when he discovered that the matter was not listed on that date. It was only upon checking online in the CTS platform that the defendant's counsel realized that the matter was called out on 20<sup>th</sup> May 2025 and the defence case has been marked as closed in the absence of the parties. It is urged that reopening the case is crucial in order that the court may conclusively determine the matters in issue on merit as the defendant has a "*formidable and candid defense*" in the rebuttal to plaintiffs "*unfounded allegations*".

4. The application is unopposed
5. I have examined the affidavit in support of the application as well as the annexures thereto, which include a copy of the relevant pages of the diary of counsel for the defendant/applicant. It appears that no entry regarding the present case was made on the page for 20<sup>th</sup> May 2025 in that diary. However, an entry regarding this case was made on the page for 28<sup>th</sup> May 2025.
6. This court is convinced that it was through sheer inadvertence that counsel and his client and witnesses failed to attend court on 20<sup>th</sup> May 2025, and that they have good grounds for seeking the orders in the application. In any event the application was filed timely on 30<sup>th</sup> May 2025 about **3** days after counsel realized that the matter had been called out on 20<sup>th</sup> May 2025. Counsel's speed in the matter is commendable.
7. I therefore allow the application dated 30<sup>th</sup> May 2025 as prayed in **prayers number 2 and 3** thereof. The costs of the application shall be in the cause. This matter shall be mentioned on 28/1/2026 for issuance of a mutually convenient hearing date.

**Dated, signed and delivered at Malindi on this 17<sup>th</sup> day of December, 2025.**

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi".

**MWANGI NJOROGE  
JUDGE, ELC, MALINDI.**