



REPUBLIC OF KENYA



**Wambugu v Muigai (Environment and Land Case E52 of 2023)
[2026] KEELC 675 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E52 OF 2023
MAO ODENY, J
FEBRUARY 12, 2026**

BETWEEN

STEPHEN WAWERU WAMBUGU PLAINTIFF

AND

JOYCE WANGUI MUIGAI DEFENDANT

RULING

1. This ruling is in respect of the Applicant's Notice of Motion dated 20th June, 2025, seeking the following orders:
 - a. Spent.
 - b. That pending the hearing and determination of this application, this court be pleased to stay the execution of the judgment entered on the 17th day of June 2025.
 - c. That this honourable court be pleased to set aside proceedings herein and the consequent judgment and/or decree issued and the suit be heard afresh with the defendant being granted leave to file her defence and defend the case.
 - d. That costs of this application be provided for.
2. The Application is supported by the annexed affidavit of the Applicant, Joyce Wangui Muigai, who deponed that the plaintiff inherited a share of the above-mentioned portion and house from his father through a will and is to hold in trust for her children.
3. She further deponed that the children have allowed her to continue occupying the house, as it is their only known home. That since some of the children are of age, they have no problem with their mother living on the suit property.



4. It was her disposition that she is a former wife of the plaintiff and did not file any pleadings since she neither had the benefit of counsel nor understood the court process. She urged the court to set aside the judgment and allow her to defend the case.
5. The Plaintiff/Respondent, Stephen Waweru Wambugu, filed a replying affidavit sworn on 29th July 2025, and deponed that he lives on the suit premises with his children and had filed this suit to remove the Applicant from the suit property as she is no longer his wife.
6. He stated that he had not ordered any of his children to vacate the suit property, but the Applicant has no right to remain on it. Further, that it is true that he inherited the suit property from his late father and that he holds part of it in trust for his children.
7. The Respondent stated that the Applicant was served with summons to enter appearance but decided not to take any action and that it is not true that he has been allowed to remain on the suit property as claimed.
8. He urged the court to dismiss the application, as the Applicant has not explained why she failed to defend the case and that her draft defence has no triable issues.

Defendant/Applicant's Submissions

9. Counsel for the Plaintiff filed submissions dated 12th January 2026, and reiterated the contents of the affidavit and relied on the cases of Kihara v Mathenge (Civil Appeal 86 of 2019) [2025] KEHC 7914 (KLR) (5 June 2025) and Laxmanbhai construction limited v praise mall Limited (Milimani Comm E471 of 2022) 2025, eKLR, on the guiding principles for setting aside default judgments and urged the court to allow the application as prayed.

Plaintiff/Respondent's Submissions

10. Counsel for the Respondent filed submissions and submitted that the Applicant's main ground of seeking setting aside on the judgment, is that she was not aware of the court process and further that the Plaintiff/ Respondent intends to evict her.
11. It was counsel's submissions that the Applicant has not disputed that all along she was served with notices to appear in court, and there are affidavits of service filed in court confirming that service on the Defendant was effected but she opted not to come to court. The Applicant has not given any explanation as to why despite being served, she did not come to court to explain her predicament.
12. Ms. Wangare stated that on the first appearance, on 12th February 2024, a counsel appeared and informed the court that the firm of Naomi Mureithi & Co. Advocates intended to come on record and file documents on behalf of the Applicant, which shows that she was well aware of this case against her. Further, the Applicant appeared in court on 12th February 2025, where she addressed the court and requested that the matter to be referred to Alternative dispute resolution and the matter was then referred to AJS but parties could not agree.
13. Additionally, counsel submitted that, a look at the affidavit allegedly sworn by the son, Gift Joe Wambugu, who has given the Applicant permission to stay on the suit land (refer to annexure marked JWM4 in the supporting affidavit), the same has been signed by Joyce Wangui Muigai, the Applicant and not the son.
14. Counsel urged the court to dismiss the application with costs, as the defence has no triable issues.



Analysis and Determination

15. The issue for determination is whether the Applicant has met the threshold for setting aside judgment.
16. The first question that the court must ask, is whether the Applicant was served with summons to enter appearance, whether the Applicant was aware of the existence of the case, and if so, what action did she take to be part of the proceedings to defend herself.
17. It is not in dispute that the Applicant was served with summons to enter appearance, it is further not contested that the Applicant was aware of the proceedings before the court, and all hearing and mention notices were served upon her. This is corroborated by the affidavits of service and her appearance through counsel on 12th February 2024. On that day counsel known as Mr. Ndicho informed the court that they had just been instructed by the Defendant/Applicant and requested for 14 days to file a response which was granted by the court.
18. Therefore, the issue that the Applicant's failure to file a defence, was because she was not aware of the court process, does not hold any water. It seems she took the matter lightly and never bothered to defend the case.
19. This matter proceeded for hearing of 23rd January 2025, and was listed for mention of 12th February 2025, to confirm filing of submissions. On this date the Defendant appeared in court, requested the court to refer the same to AJS, and stated that it is a family matter as the Plaintiff was her husband. Counsel for the Plaintiff agreed and the matter was duly referred to AJS.
20. On 1st April 2025, the AJS registry wrote a letter informing the court that the same was unsuccessful therefore returned to court for further deliberations. Mr. Ndichu, counsel for the Applicant filed an application and on 24th July 2025, informed the court that parties were negotiating and sought more time.
21. The reason given by the Applicant that she did not understand the court process is not tenable as at all material she had counsel representing or advising her. I find that this is not a suitable case where the Applicant should benefit from an order of setting aside a regular judgment.
22. The Applicant's draft defence does not have triable issues, where if this matter is set aside and heard afresh will come to a different outcome. In the case of James Kanyita Nderitu & another v Marios Philotas Ghikas & another [2016] KECA 470 (KLR), the court held:

“A "triable issue" is one which raises a prima facie case and is not a mere sham or a moonshine. The Applicant bears the burden of placing before the Court some evidence of a defence that is not frivolous or vexatious. I note that upon becoming aware of the interlocutory judgment against it the Defendant moved with speed to place before this court its present application to set aside the same and to be allowed to defend the suit against it In the supplementary affidavit filed by the Plaintiff on 16th May 2025, the Applicant has at paragraph 16 therein annexed a draft defence that it intends to file in these proceedings. A perusal of the said draft defence reveals that the same is not a sham but raises triable issues that the court will need to consider. I am satisfied therefore that the Defendant has demonstrated that it is keen to be heard and is intent defending the suit.”
23. The Applicant admits that she is no longer the Plaintiff's wife, their marriage having been dissolved in Nakuru C M's Divorce Cause No. 15 of 2018. She also stated that the Plaintiff inherited the suit premises from the late father for his benefit and those of his children, which he has stated that he does not intend to evict the children.



24. I find that the application lacks merit and is therefore dismissed with costs to the Plaintiff/Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF FEBRUARY 2026.

M. A. ODENY

JUDGE

