



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
CIVIL APPEAL NO. E042 OF 2025

BETWEEN

DANCAN OBONDI ONKUNDI.....APPELLANT

AND

TRANSMARA SUGAR COMPANY LIMITED.....RESPONDENT

(Being an Appeal from an order in Migori Chief Magistrate’s CMCC No.540 of 2018 by Hon. A. Munyuny –Resident Magistrate).

JUDGMENT

1. On February 17, 2015, Hon. Munyuny delivered a ruling ordering the application dated 3rd June 2024 dismissed with costs. The matter was in court for confirmation of compliance with the plaintiff’s application dated 3rd June 2024. The appellant was dissatisfied with the order and submitted this appeal. They were represented by L.A. Ooro & Associates Advocates. The appeal was based on the following grounds:
 - a) The learned trial magistrate erred in law and fact when she failed to consider the duly filed plaintiff’s notice of withdrawal dated 13th February, 2025 and instead proceeded to dismiss the application dated 3rd June, 2024, when the same was listed for mention to confirm filing of submissions.
 - b) The learned trial magistrate erred in law and fact when she dismissed the plaintiff’s notice of motion application on 3rd June, 2024, in spite of a notice of withdrawal of the application having been filed, thereby closing the file and denying the plaintiff his right of access to justice.
2. Oyagi, Ong’uti, Magiya & Company Advocates represented the respondent. They, however, did not file any grounds of opposition or submissions.
3. The order issued by the learned trial magistrate indicates that the matter was in court on February 17, 2015, for confirmation of compliance by the parties in respect of the application

dated 3rd June, 2024. Instead of proceeding with the matter in court, she dealt with the application dated 3rd June, 2024, and dismissed it. This was irregular and not procedural.

4. The impugned order of the learned magistrate is hereby set aside. This matter should proceed before any other magistrate other than Hon. A. Munyuny.

Delivered and signed at Migori, this 24th day of February 2026

**KIARIE WAWERU KIARIE
JUDGE**