



REPUBLIC OF KENYA



KENYA LAW
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**Hassan v De Fabiana & 2 others (Land Case E046 of 2020)
[2026] KEELC 1297 (KLR) (2 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1297 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
LAND CASE E046 OF 2020
FM NJOROGE, J
MARCH 2, 2026**

BETWEEN

ABDULRAHMAN SHEIKH HASSAN PLAINTIFF

AND

**MARIA ANGELA DE FABIANA & 2 OTHERS & 2 OTHERS & 2
OTHERS DEFENDANT**

RULING

1. The application dated 25th November 2025 is supported by the affidavit of the applicant. It is seeking the following orders
 - a. That the court do vacate and or set aside orders issued on 24th November 2025 closing the defence case and substitute the same with an order to reopen and cross-examine the first defendant based on the evidence on record;
 - b. That the court be pleased to reopen the defence case and make an order allowing the first defendant to participate in the proceedings to give evidence and produce documents for purposes of fair trial and just determination of the real issues in dispute;
 - c. That the court be pleased to reopen the first defendant's case and recall the first defendant for purposes of cross-examination by the plaintiff;
 - d. That the costs of the application be provided for.
2. The application is premised on various grounds inter alia, that the 1st defendant was indisposed and could not attend court to testify on the date of the hearing; that the defendant has a good defence raising triable issues.
3. The application is opposed by the plaintiff who filed the sworn affidavit of Enrique Quercioli dated 26th January 2026. The deponent states that on the material day the applicants counsel was present in



court when directions for hearing one issued; that when the matter came up for hearing, the applicants counsel made an oral application to have the matter adjourned on account of the fact that the applicant was indisposed, the applicant had not informed counsel beforehand and the court, having heard the application, was not convinced as the same was not supported by evidence to warrant the adjournment sought. The deponent cast doubts on the veracity of the purported treatment notes exhibited by the applicant labelling them as cooked for the specific purpose of the present application. The deponent stated that the application is res judicata because an earlier application had been made orally and disallowed. He urged the court to consider that the immense power the court to reopen a case should be exercised cautiously so as not aid an indolent litigant.

4. In support of the application, counsel for the applicants submitted by the matter was scheduled for hearing 25th November 2025 which date was given by the court on 13th May 2025. However, it transpired that on that date the plaintiff was unavailable because his wife was unwell; that previously the defendant had been consistently attending court; that though there were no medical reports available by the date of hearing, the plaintiff's counsel had been notified that the defendant was unwell and in hospital; that however the court proceeded to hear the matter in the absence of the first defendant and closed the defence case suo moto. It is averred that the defendant's defence raises triable issues, that he has filed documents and that she intends to call key witnesses in the matter; that the defendant should not to be condemned unheard as that would be contrary to the rules of natural justice. The cases of Shah versus Mbogo and another 1967 EA 116 and Wachira Karani Versus Bildad Wachira 2016 eKLR were cited by the defendant's counsel in support of the application.
5. I have considered the application. The 1st defendant has attached documents, though doubted by the plaintiff, showing that she was unwell as at the date of the hearing. This court is however ready to accord the applicant the benefit of doubt. No one can predict illness. Nonetheless, there is need for opposing counsel to be informed by the other side of the indisposition of the litigant as a matter of courtesy and in a timely fashion. Where this has not been done it leaves counsel for the opposing side in confusion. This court is also of the opinion that the respondents will be prejudiced by having the clock rolled back by the orders sought in the application if they are allowed. In this court's view, the applicant has demonstrated a genuine desire to be heard. There are no further documents being sought to be filed by the applicant and she intends to rely on the filed documents only. This is less of an inconvenience compared to where new documents may be intended to be filed.
6. Consequently, it is the opinion of the court that though the first defendant should be given an opportunity to present her case she needs to pay the other parties the costs of the application before the next mention to arrange for a hearing.
7. Consequently, in exercise of my discretion I hereby allow the application dated 25th November 2025 and I make the following orders:
 - a. The prayers no, 2, 3, and 4 in the application dated 25th November 2025 are hereby allowed;
 - b. The applicant shall pay the plaintiff, and the 2nd defendant on behalf of the 3rd defendant, Kenya Shillings 30,000/= (thirty thousand only) each being costs of the application before the next mention date in default of which the orders made herein above under (a) shall lapse;
 - c. This matter shall be mentioned on 20th May 2026 for further directions.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 2ND DAY OF MARCH 2026.

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

