



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC CIVIL CASE NO. 1633 OF 2000**

**WANANDEGE CO-OPERATIVE SAVINGS & CREDIT SACCO  
LTD.....PLAINTIF  
F**

**VERSUS**

**PAUL MUSILI.....1<sup>ST</sup>  
DEFENDANT**

**MICHAEL NDICHU WAWERU.....2<sup>ND</sup>  
DEFENDANT**

**JULIANA WANJIRU.....3<sup>RD</sup>  
DEFENDANT**

**JAMES M. MUTHEE.....4<sup>TH</sup>  
DEFENDANT**

**CHRISTOPHER KIPLAGAT SEREM.....5<sup>TH</sup>**  
**DEFENDANT**

**JOHN KIBITI STEPHEN.....6<sup>TH</sup>**  
**DEFENDANT**

**AND**

**NAIROBI CITY COUNCIL.....THIRD**  
**PARTY/RESPONDENT**

**RULING**

1. In the application dated **12<sup>th</sup> May 2025** the 1<sup>st</sup> and 3<sup>rd</sup> Defendants pray that the court set aside the order made on 12<sup>th</sup> May 2025 dismissing the suit and closing the file and that the matter be reinstated for hearing. The application is supported by the affidavit of Paul Musili the 1<sup>st</sup> Applicant in which he deposes that he and the 3<sup>rd</sup> Defendant were sued by the Plaintiff claiming ownership of Embakasi Village Plot Number 9045/566.

2. That he brought in the City County who is the possessor of records and information as a third party. He states that he and his co defendant have a claim against the Third Party on

the multiple and conflicting allocations. He states that the issue of the rightful owner of the suit property has not been determined.

3. He pleads that the dismissal of the suit on 12<sup>th</sup> May 2025 in the absence of their advocate amounted to a grave misfortune. He urges the court to allow the application so that the matter can be heard.
4. The sole issue for determination by the court is whether the court order made on 12<sup>th</sup> May 2025 should be set aside so that directions can be given on the way forward. The matter was coming up for hearing when the court noted that from the material on the file it appeared that the matter had been compromised and an application to set aside the consent dismissed on 20<sup>th</sup> February 2019. The court ordered the file closed.
5. Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Defendant urges the court to set aside this order as she had difficulty logging into the platform on the 12<sup>th</sup> May 2025. The power to set aside ex parte orders is discretionary. This was stated in **Patel v E.A**

**Cargo Handling Services Ltd (1974) EA 75**, wherein the court held that:

***“There are no limits or restrictions on the Judge’s discretion to set aside or vary an ex-parte judgment except that if he does vary the judgment, he does so on such terms as may be just. The main concern of the Court is to do Justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given it by the Rules.”***

6. In considering whether the court should exercise discretion in favour of the applicant. I will consider the following factors;

- Reasons for not attending court
- Conduct of the applicant
- Prejudice to the Respondent

7. The order was made in absence of counsel who had difficulty logging in. The counsel promptly filed the application to set aside. Setting aside will enable the court to hear all the parties in the matter. Being a land matter it is essential that all the parties are given a chance to be heard.

8. The application is allowed as follows;

**a. Court sets aside the proceedings and order made on 12<sup>th</sup> May 2025.**

**b. Costs shall be in the cause**

**Dated, Signed and delivered virtually this 12<sup>th</sup> day of February 2026.**

**JUDY OMANGE**

**JUDGE.**

**IN THE PRESENCE OF:**

NA for the Plaintiff.

Mr. Wachira for the Defendant.

Peter - Court Assistant.