

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELC NO E034 OF 2025

ISAAC MWANGI

KANYORO.....PLAINTIFF.

VERSUS

JANE NYAMBURA

MAGUTA.....DEFENDANT.

RULING:

In her Application dated 11/6/2025, the Defendant/Applicant seeks for Orders to set aside the default Judgment entered by this Court on 23/10/2017 and that she be granted leave to file a Defence out of time and unconditional leave to defend this suit and that the Draft Defence she has attached to the Application be admitted out of time.

The Applicant depones that she was not given an opportunity to defend the suit and that it is only fair and in the interest of justice that the said leave be granted. She states in her Affidavit in support of the said Application sworn on even date that the hearing of the suit proceeded ex parte after Judgment in default was entered on 23/10/2017. She had not been served with summons to enter appearance nor the Notice of entry of Judgment and thus due process of the law was faulted. She

further depones that she became aware of the existence of this suit when she was served with the 12/2/2025 Application seeking to revive the suit which she did not oppose since she wanted to file the current Application. She urges the Court that she was condemned unheard and that her Defence raises triable issues. The Application, according to the Applicant, brought more than 8 years after the default Judgment has been made promptly, in good faith and without unreasonable delay.

In her Replying Affidavit sworn on the 8/8/2025, the Plaintiff depones that the Application is an abuse of the Court process, the Applicant was duly served with the summons to enter appearance way back on 20/9/2017 by a process server in the name of Peter Githinji Ngure. This was in the lifetime of Isaac Mwangi Kinyoro who has since died and has been substituted with Theresiah Wanjiku Mwangi. She depones that the Defendant did enter appearance on 6/10/2017 but subsequently failed to file a Defence within the prescribed time as a result of which Judgment was entered against her on 23/10/2017. She therefore slept on her rights for over 7 years.

The recommencement of the case could go against the Court's overriding objective of ensuring just and expeditious resolution of disputes. She also pokes holes on the draft Defence and asks the Court to dismiss the Application dated 11/6/2025 for being unmeritorious and an abuse of the process of the Court.

In a further Supporting Affidavit sworn on 27/8/2025, the Defendant insists that she was never been served with the Summons to enter appearance as deponed by the Plaintiff and that since she was being represented by the firm of Wageni & Co. Advocates in other matters, the firm must have been served on her behalf. But that the said Mr. Wanyeki of Wageni & Co Advocates who used to represent her passed on in 2016. She depones that the Plaintiff would suffer no prejudice if her prayers are granted.

I am not aware where this notion came from where when the Applicant is asking the Court to either stay execution, halt any proceedings or like it is in this case, urging the Court to set aside certain Orders and start the case all over again, the Applicant always says the Respondent would suffer no prejudice. I cannot imagine how one who was awarded Judgment about 8 years ago would not suffer any prejudice when told that such Judgment would be set aside and the case be heard de novo. Some witnesses may have died, be out touch, gone out of the jurisdiction of the Court or even lost their memory. It is therefore a fallacy. I wish the tune would change sooner than later. One who has pocketed certain rights is like a dog who has a bone between his teeth. You are dared to try and remove the same between his jaws. The consequences would be dire. That's when you would learn the folly of saying that the opposite party would suffer no prejudice.

However, it appears that the Defendant herein Jane Nyambura Maguta had instructed the firm of Wageni & Co. Advocates to enter appearance on her behalf and the said firm did so on 6/10/2027. But she fervently denies to have been served with the Summons.

However, as fate would have it, she says that her Advocate, Mr Wanyeki passed on in 2016. 2016 was before the Memorandum of Appearance was even filed and assuming that the date of Mr. Wanyeki's death was 2016 then it appears that somebody else in the firm took up the matter and proceeded with it. But the Defendant/Applicant never pursued the matter with the said firm and even lost track.

Time lapse is a factor in setting aside a Default Judgment and the time involved herein is quite unreasonably and inordinately long. The same is actually unexplainable. It cannot be entertained that parties will stay for so long without following to find out what is happening with their matters.

Again, the Applicant denies the obvious. If indeed she had not been served with the summons to enter appearance, then how did the firm of Wageni & Co Advocates get the Summons and instructions to enter appearance on her behalf. For the above reasons, the Application dated 11/6/2025 is hereby dismissed with costs to the Respondent for the same is an abuse of the process of this Court.

**Ruling dated, signed and delivered at Nyandarua this 18th
Day of March, 2026.**

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: samson

Plaintiff's Counsel: Present in Court in person.

Defendants' Counsel: Ms. Kimashia.