



**Kimunai v Agricultural Finance Corporation & 6 others (Environment and Land Case 25 of 2022) [2026] KEELC 1718 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1718 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 25 OF 2022**

**CK NZILI, J**

**MARCH 24, 2026**

**BETWEEN**

**TIREITO KIMUNAI ..... PLAINTIFF**

**AND**

**AGRICULTURAL FINANCE CORPORATION ..... 1<sup>ST</sup> DEFENDANT**

**SABATIA SELF HELP GROUP TRUSTEES ..... 2<sup>ND</sup> DEFENDANT**

**BEN WEKESA ..... 3<sup>RD</sup> DEFENDANT**

**ALFRED KIPSIGEI MUTUO ..... 4<sup>TH</sup> DEFENDANT**

**FRANCIS WAFULA KILINJI ..... 5<sup>TH</sup> DEFENDANT**

**PETER SIMIYU WAKOLI ..... 6<sup>TH</sup> DEFENDANT**

**RODGERS WANYONYI NYARANGA ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. By an application dated 9/2/2026, the court is asked to review, vary, and or set aside the orders made on 22/1/2026 dismissing the suit for want of prosecution. The reasons are contained on the face of the application and in a supporting affidavit of Edwin Ruto, Advocate, sworn on 9/2/2026. The applicant deposes that the parties are actively engaged in an out-of-court settlement, which is almost finalized, awaiting the court's adoption.
2. This suit was commenced under a certificate of urgency by a plaint and an application dated 2/8/2006. Interim orders of injunction were therefore issued in favour of the plaintiff on 3/8/2006, stopping the Agricultural Finance Corporation from auctioning L.R. No. 8994/33 Kaptich Ltd.



3. By an application dated 10/8/2006, the 1<sup>st</sup> defendant was joined as an interested party, who thereafter filed a statement of defence dated 17/8/2006, seeking judgment on the admission of Kshs.2,465,154/=, as admitted in the plaint and witness statement thereof.
4. An amended plaint was later filed on 5/10/2023, bringing on board the 3<sup>rd</sup> - 7<sup>th</sup> defendants, said to be the actual owners in possession of Kaptich Farm, after an alleged purchaser on 26/1/1994, with an understanding that they would take over the debt that the plaintiff owes to the 1<sup>st</sup> defendant as the chargee of the suit property.
5. In the amended plaint, the plaintiff sought for the court to declare the charge registered as time-barred and void, and the interest rule unconscionable, as well as time-barred after 31/3/2004, in the alternative, taking into account a permanent injunction, and that it is the 2<sup>nd</sup> - 7<sup>th</sup> defendants who ought to settle the remainder of the loan.
6. On 1/11/2023, this court issued a Notice to Show Cause after the reluctance of the parties to set down the matter for a hearing. When the Notice to Show Cause came on 21/11/2023, the plaintiff was absent. The court proceeded to dismiss the suit for non-prosecution, only for the plaintiff's advocate to appear later and claim he had some problems.
7. The court reluctantly set aside the order. The 2<sup>nd</sup> - 7<sup>th</sup> defendants were directed to file a defence within 7 days.
8. After several mentions, on 13/6/2024, the parties opted to go for mediation. An order to that effect was made on 13/6/2024. The matter was mentioned over 11 times before the Hon. Deputy Registrar until it was referred to this court for directions on 16/5/2025 for 22/7/2025.
9. The parties failed to show up, and a Notice to Show Cause was issued on 2/10/2025. On 2/10/2025, the court was informed that a mediation agreement had yet to be signed by all the parties. The plaintiff prayed for a mention date in sixty days. The court gave a hearing date for 11/12/2025.
10. Learned counsel Mr. Kibichiy appeared together with his client on 11/12/2025 and told the court that he was not ready to proceed, due to the advanced age of his client, who was said to have mental lapses. Learned counsel asked to be granted a chance to file an application to substitute his client with another person within 7 days.
11. Learned counsel told the court that he had also written a letter to the defendants over the adjournment and a proposal for a mediation agreement. Learned counsel Mr. Githinji for the defendants denied receiving the letter. The court adjourned the matter and directed that the application for substitution be filed and served within 15 days from the date thereof.
12. A mention date for further direction was given for 22/1/2026. Come 22/1/2026, the plaintiff changed tune and told the court that the matter was for mention to confirm the status of the mediation report. The court was told that the plaintiff had signed it and forwarded the same to the mediator. Learned counsel for the 1<sup>st</sup> defendant told the court that it had been signed. None of the parties was clear where it was and why it had not been filed in court if it had been duly executed. Equally, the plaintiff was silent on the fate of the application for substitution.
13. The deponent to the supporting affidavit is not the plaintiff but a lawyer, who blames the court for unconstitutionally and unfairly dismissing the suit on a technicality and thereby defeating his client's constitutional right to access to justice, to fair hearing, and substantive justice, yet the suit raises triable issues.



14. The deponent is silent on the history of this matter, and on several occasions, the matter has been mentioned since 2006 to the present, without prosecution. The plaintiff continues to enjoy interim orders even after admitting the claim and seeking to have the loan repaid by the 2<sup>nd</sup> – 7<sup>th</sup> defendants. The attached application for substitution had not been filed by 22/1/2026. No explanation was given on 22/1/2026 as to why the applicant had not complied with the court orders.
15. To date, the alleged mediation agreement ready for adoption by this court is not attached to the application. If the court were to believe the averments by the plaintiff's counsel on oath. The defendants in the suit are 7 in number. The draft application for substitution is not even signed by the plaintiff. A mental assessment report is not attached to the supporting affidavit to show the status of the applicant. The application is not made under the *Mental Health Act*. The inordinate delay in this matter has not been explained at all.
16. Court orders are not made in vain. A party that has been given an opportunity to be heard and fails to exploit it cannot turn around, without explanation, for not taking up their opportunity to allege denial of a right to fair hearing, access to justice, and breach of their constitutional rights. The court has an equal duty to expedite the disposal of cases. A party that comes to court must be ready to play by the rules of trial and to help the court in its mandate.
17. Looking at the circumstances of this matter, the plaintiff is abusing the court process. He has been enjoying interim orders stopping an auction of the land for a debt owed to the 1<sup>st</sup> defendant.
18. The upshot is that the court is not inclined to vary, review, or set aside its orders of 22/1/2026. The application is dismissed with no order as to costs.
19. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant – Dennis

Ruto for the Kibichiy for the plaintiff present

Githinji for the 1<sup>st</sup> defendant present

2<sup>nd</sup> and 7<sup>th</sup> defendants present

