



**Arusei (Suing as the legal administrator of the Estate of the Late Elizabeth Jepkoech Ruto - Deceased) & 2 others v Ruto (Environment and Land Case E016 of 2023) [2026] KEELC 2377 (KLR) (29 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2377 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E016 OF 2023**

**CK NZILI, J**

**APRIL 29, 2026**

**BETWEEN**

**VIVIAN JEPKEMOI ARUSEI (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE ELIZABETH JEPKOECH RUTO - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**ELIUD KIBET SEREM ..... 2<sup>ND</sup> PLAINTIFF**

**BRIAN KIPLETING SEREM ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SAUL KIPKENY RUTO ..... DEFENDANT**

**RULING**

1. The judgment in this suit is scheduled for 29/4/2026. The defendant, as the applicant, has filed an application dated 5/3/2026 pending the judgment. He seeks;
  - a. ... spent.
  - b. This court be pleased to arrest the delivery of its judgment fixed for 29/4/2026 in favour of a full, inclusive, and or fair trial of this matter.
  - c. This court be pleased to set aside, vary, and or vacate its orders directing the closure of both the respondents' and the applicant's cases, with a view to reinstating the defence and counterclaim and also re-opening this matter for an inclusive, full, and or fair trial of the same.
  - d. This court be pleased to recall all witnesses who testified in support of the respondent's case and do grant the applicant leave to cross-examine all of them, in the interest of justice and fairness.



- e. This court be pleased to enlarge the time and grant the applicant, and any of his witnesses, leave to file their statements and any further documents, in full compliance with the Civil Procedure Rules, within the time so enlarged.
  - f. Costs.
2. The grounds on the motion and in the affidavit sworn on 5/3/2026 are that: the respondents testified on 24/2/2026 and sought to close their case as well as the applicants' case. The applicant deposes that he has since engaged the firm of M/S Cheruiyot Melly and Associates Advocates to pursue this matter alongside the firm of Murgor and Company Advocates, save that at the time of hearing on 24/2/2024, he had not furnished the former with sufficient instructions to appear in Court.
  3. The applicant deposes that the hearing of the suit proceeded ex parte, where the applicant and his witnesses were not heard on account of non-attendance and want of prosecution. The applicant deposes that if the judgment is delivered, it will prejudice the applicant irreparably, as his pleadings remain unsubstantiated, as his defence and counterclaim were never prosecuted.
  4. According to the applicant, the non-attendance was not deliberate, but was occasioned by circumstances beyond their control, as they were indisposed and had communicated to the respondents' counsel in writing.
  5. The applicant deposes that he stands to suffer irreparably, if the orders sought are denied, prejudice which cannot be adequately compensated by any award of damages, as compared to the respondents, who can be compensated in costs. Again, the applicant deposes that at the close of the suit, he had not filed his statement, alongside any of his witnesses, as he has been suffering from a long illness from which he has to recover.
  6. The applicant avers that he has been visiting and seeking the services of medical experts during the pendency of this matter due to the various medical conditions, which have incapacitated his ability to actively follow up on these proceedings.
  7. The applicant deposes that witnesses can be recalled at any stage in all cases before judgment is entered, where an applicant has shown sufficient cause.
  8. The applicant deposes that the respondents and the witnesses who testified in support of the respondents' case were not cross-examined, hence the need to challenge their credibility as provided in law.
  9. Further, the applicant deposes that no rules of natural justice, statutory protection, evidence, or any rule of common sense are to be sacrificed, violated, or abandoned when it comes to the right to a fair trial. The right to be heard must not be taken casually, especially when the applicant avers that the opposing party can be compensated by an award of costs.
  10. The applicant deposes that his counsel was to have the matter adjourned for reasons contained in his letter addressed to both the court and the opposing counsel, and was equally advised not to attend court when this matter was coming up for hearing.
  11. The applicant deposes that the application is brought in good faith without unreasonable delay and not to obstruct the cause of justice. The application raises pertinent points of law and facts that deserve a judicial determination.
  12. The applicant has attached copies of the letter, doctor's report, and further documents as annexures marked SKR1-3.



13. The application is opposed by the 1<sup>st</sup> respondent vide a replying affidavit sworn by Vivian Jepkemboi on 16/3/2026. She deposes that the application has been brought too late in the day with the malicious intentions of delaying the conclusion of this matter.
14. The 1<sup>st</sup> respondent terms the reasons and grounds in support of the application as baseless, dishonest, since the suit proceeded to trial with the full knowledge of the counsel of the applicant, and that all pleadings were filed, served, and subsequently closed before the hearing.
15. The 1<sup>st</sup> respondent deposes that the orders sought by the applicant will occasion prejudice to her and her family, since they have been in court for a long time. In a brief history of the matter, the 1<sup>st</sup> respondent deposes that the suit was herein vide the plaint filed in 2023 and the applicant filed his memo of appearance in March, 2023. The suit was then fixed for hearing by way of formal proof when the defendant failed to file their defence on time or at all.
16. By an application dated 21/11/2023, a day before the trial date of 22/11/2023, seeking the court to set aside its orders of allowing the matter to proceed ex parte and to allow the filing of a defence. The 1<sup>st</sup> respondent avers that a consent was recorded allowing the application with throw-away costs of Kshs.20,000/=, which only Kshs. 10,000/= was paid, and the applicant was allowed to file a defence within 14 days.
17. The 1<sup>st</sup> respondent deposes that the applicant filed the document past the deadline and on the eve of the hearing. The court then reserved its ruling for 8/4/2024. However, the applicant brought yet another application seeking to arrest the delivery of the ruling, and the ruling was held in abeyance, and subsequently the court allowed parties to comply and file their respective trial bundles for mention on 30/10/2024.
18. Come 30/10/2024, the 1<sup>st</sup> respondent deposes that the applicants' amended pleadings filed without leave of court were expunged from the proceedings.
19. The 1<sup>st</sup> respondent further deposes that the applicant then filed notice of preliminary objection dated 27/11/2024, seeking to have the respondent's pleadings struck off, which was intended to delay the ruling for 18/3/2025.
20. The 1<sup>st</sup> respondent deposes that she filed and served a reply to the defence and defence to the counterclaim on 1/7/2025 and complied with Order 11 of the Civil Procedure Rules, the applicant's trial bundle was filed on 9/10/2025, and the matter proceeded to trial.
21. The 1<sup>st</sup> respondent deposes that the applicant has all along been very reluctant in the matter, and despite his illness, he is still able to attend to his farming activities on the subject land with the intention of delaying the rightful use and enjoyment of the respondents.
22. The issues calling for this court's determination are:
  - i. Whether the judgment of this court, as scheduled, should be arrested.
  - ii. Whether the orders issued on marking the parties' cases as closed should be set aside, varied, or vacated, the defence and counterclaim vacated, and the suit reopened.
  - iii. Whether the respondent's witnesses should be recalled for cross-examination by the applicants.
  - iv. Whether this court should enlarge time and grant the applicant and his witnesses to file their witness statements and any further statements to comply with Order 11 of the Civil Procedure Rules.



- v. Who should bear the costs of this application?
23. In *Richard Nyagaka Tong'i -vs- Chris Munga N. Bichage & 2 others* SC Petition No. 17 of 2014 [2015] eKLR, the court held that from the foundation of the current case law, a judgment is a determination or decision of a court, that finally determines the rights and obligations of the parties to a case, and includes any decree, order, sentence, or essential direction for the execution of the intent of the court.
  24. A court will not routinely withhold the delivery of its judgment unless under exceptional circumstances. Looking at the record of this court, starting with 30/7/2025. Both parties were represented by their respective counsel on record. The date was to confirm compliance with Order 11 of the Civil Procedure Rules, where parties had not filed their pretrial questionnaires. The court graciously extended the time for parties to fully comply with the same.
  25. Come 9/10/2025, Mr. Murgor, learned counsel for the applicant, indicated to the court that though the applicant had been unwell had recovered, and sought a hearing date. A hearing date was scheduled for 24/2/2026. On that date, the record indicates that Mr. Murgor, advocate, was present online when the matter was given a time allocation and placed aside.
  26. The learned counsel strangely disappeared from the screen and did not cross-examine the three witnesses by the respondent. There was no explanation given on the same. The respondents proceeded and closed their case. The court, in the absence of the applicant and his counsel, marked the defence and counterclaim as closed for non-attendance.
  27. Order 12 Rule 7 of the Civil Procedure Rules grants the court discretion to set aside, recall, and or reinstate a suit or application dismissed for non-prosecution or non-attendance. In *John Nahashon Mwangi -vs- Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR, the court held that the tests to apply in an application for reinstatement are whether there are reasonable grounds to reinstate, the prejudice that the defendant would suffer as a result of the reinstatement, and the prejudice the plaintiff would suffer if the suit is not reinstated.
  28. The applicant has annexed a letter filed on 23/2/2026, indicating that the applicant and his counsel had been unwell and that the applicant, who had not filed his statement, would require a next friend to act on his behalf. The counsel also requested another hearing date.
  29. On the hearing date, Mr. Murgor, advocate, was present and failed to bring this issue to the attention of the court or seek a further hearing date for the defence case.
  30. To recall and or enlarge time is at the discretion of the court. Caution is often given that courts should not exercise such discretion whimsically. Looking at the justice of this matter, both the applicant and his counsel are at fault, despite the unfortunate ill health. The applicant, through a notice of appointment dated 16/2/2026, has since instructed the firm of M/S Cheruiyot Melly & Associates to act together with the firm M/S B. Murgor & Company Advocates. In *Belinda Murai & 9 others -vs- Amos Wainaina* [1961] EA 679, the held mistakes of a legal adviser may amount to sufficient cause.
  31. In *Philip Chemowolo & another -vs- Augustine Kubede*, [1982-88] KAR 103 at 1040, the court held that blunders will continue to be made from time to time, and it does not follow that because a mistake has been made, a party should suffer the penalty of not having his case heard on merits. See *Lochab Bros Ltd -vs- Peter Karuma T/A Lumumba Lumumba Advocates* [2003] eKLR.
  32. Articles 48 and 50 of *the Constitution* guarantee every Kenyan the right to access justice and a fair hearing. Article 159 thereof requires that justice shall be administered without undue regard to technicalities, whereas Sections 3, 4, and 13 of the *Environment and Land Court Act*, as read together



with Sections 1A, 1B, and 3A of the *Civil Procedure Act*, call for substantive justice. Justice calls for this court to halt the delivery of its judgment and hear the suit on merit.

33. Considering the merits of the case and the interest of justice, the court is inclined to allow the application and does issue orders in the following terms;
- a. The judgment scheduled for 29/4/2026 is hereby withheld.
  - b. The orders issued on 24/2/2026 are hereby set aside; the plaintiffs' witnesses shall be recalled for cross-examination only.
  - c. The defendant's defence and counterclaim are reinstated.
  - d. The court declines to grant leave to file a witness statement at this stage.
  - e. Throw away the costs of Kshs. 30,000/= to be borne by the defendant and shall be paid before the next hearing.
34. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29<sup>TH</sup> DAY OF APRIL 2026.**

In the presence of:

Court Assistant - Dennis

No appearance

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

