



Mwaura & 2 others v Prayers Beyond Boundaries Ministries & 4 others (Environment and Land Petition E005 of 2025) [2026] KEELC 2291 (KLR) (23 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2291 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND PETITION E005 OF 2025**

**J OMANGE, J
APRIL 23, 2026**

BETWEEN

**HON JAMES MBIRIRI MWaura 1ST PETITIONER
OLEPOLOS SOCIAL JUSTICE 2ND PETITIONER
MAASAI SILANGA ROAD RESIDENTS 3RD PETITIONER**

AND

**PRAYERS BEYOND BOUNDARIES MINISTRIES 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT
THE COUNTY GOVERNMENT OF KAJIADO 3RD RESPONDENT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 4TH
RESPONDENT
LAND REGISTRAR NGONG 5TH RESPONDENT**

RULING

1. In the Application dated 12th September 2025, the Petitioners seek the setting aside of Court orders issued on 9th July 2025 and the reinstatement of their Application dated 17th March 2025 which was dismissed for nonattendance. The Application is supported by an affidavit sworn by the Petitioners' Advocate.
2. It is premised on the grounds set on the face of the application and in the supporting Affidavit in which he states that his nonattendance was occasioned by simultaneous engagements in other courts, and that by the time he accessed the online court platform, the matter had already been called and dismissed. He further avers that the substantive Application dated 17th March 2025 concerns construction of a large-scale church by the 1st Respondent on riparian land, and that this construction poses grave



environmental risks to the wider Ngong community. Therefore, if the Application is not reinstated, the larger Ngong community will suffer irreparable harm.

3. The 1st Respondent contested the application on grounds that the Applicant had failed to appear in Court on two prior occasions before the application was dismissed and had not given justifiable reasons for the non-appearance nor had he communicated to the other counsels.
4. The application was canvassed by way of written submissions.
5. The Applicant submitted that non-attendance on 9th July 2025 was attributable to an unavoidable and simultaneous engagement in two concurrent matters before separate Courts. And by the time Counsel accessed the online Court for this matter, it had already been called out and summarily dismissed. He sought reinstatement arguing that the issues raised were of significant public importance, involving the protection of public land, riparian reserves, and the constitutional right to a clean and healthy environment. It was in the interest of justice therefore that the suit be sustained pointing out that it was not prejudicial to the Respondents. Reference was made to *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another* [2016] KECA 470 (KLR), Section 3A of the *Civil Procedure Act*, Order 12 Rule 7 and Order 51 Rule 15 of the Civil Procedure Rules.
6. The 1st Respondent submitted that no sufficient cause had been demonstrated to warrant exercise of the Court's discretion in favour of the Applicants pointing out that the Applicant has a habit of non-attendance. And if the Application was as significant as submitted by the Applicants, they should have duly attended Court. Counsel also pointed out inconsistency in the argument that the Advocate had other Court engagements indicating that the document produced was dated 9th September 2025 while the matter was dismissed on 9th July 2025. Counsel also argued that there was delay in filing the reinstatement application indicating that the Court orders were issued on 9th July 2025, but the current application was filed in September 2025. Reinstating the application would therefore violate the overriding objective under Sections 1A and 1B of the *Civil Procedure Act* and should be declined. Reference was made to the following cases *Vincent Sila Jona & 87 Others v Kenya Prison Service & 2 Others* [2021] KEHC 13027 (KLR) and *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2020] KECA 486 (KLR).
7. Having considered the application, submissions and evidence on record, the issue for determination is whether the Orders issued on 9th July 2025 should be set aside and the Application dated 17th March 2025 reinstated.
8. The Court's power to set aside a dismissal order is anchored in Order 12 Rule 7 of the Civil Procedure Rules provides that: Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just. This is however a discretionary remedy which is to be exercised on a case to case basis.
9. While Counsel has attributed his non-attendance to having concurrent matters on the 9th July 2025, a perusal of this Court file shows that on 21st March 2025, the impugned application was certified as not urgent and was set down for issuance of directions on 12th June 2025. It is on record that on this date, counsel for the Petitioners were absent in Court. A further date of 9th July 2025 was given by Court and once again, the Petitioners/ their advocates were absent necessitating the dismissal for non-attendance.
10. This Court takes this opportunity to sternly reprimand the Petitioners' Advocate for the repeated non-appearances. The Court addresses counsel to Section 1A and 1B of the *Civil Procedure Act* on the just expeditious, proportionate and affordable resolution of the court disputes. Any further unexplained absence shall not be tolerated by this court.



11. On whether the one month delay in filing the reinstatement application is inordinate, while there is no singly universally accepted definition of inordinate, the Supreme Court of Kenya, in *Muya v Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya*, Judge of the High Court of Kenya [2022] KESC 16 (KLR) held:

“... whether a delay is inordinate is a question to be determined on a case by case basis and on the peculiar facts and circumstances; that inordinate delay should not be difficult to discern where it occurs- it should be apparent, self-evident and obvious.... five months’ delay was simply a delay, not inordinate delay. We believe too, that, justice could still be served despite the delay...”

12. From the foregoing, while the one month delay in filing this reinstatement application can be argued as a delay, this court does not find that this delay is inordinate, inexcusable or caused any injustice to the Respondent which can be mitigated by way of costs.

13. The Court also takes cognisance that the 1st and 4th Respondents had already filed responses to the impugned application dated 17th March 2025. Taking all these issues into consideration and the nature of the Petition which is of public importance, the Court finds that no prejudice will be suffered if the orders issued on 9th July 2025 are set aside, and the application is reinstated and determined on its merits.

14. The application is allowed in the following terms;

- i. The orders of this Court dated 9th July 2025 dismissing the Application dated 17th March 2025 for non-attendance are hereby set aside.
- ii. The Application dated 17th March 2025 is hereby reinstated and shall be set down for hearing
- iii. Parties who have not yet done so are directed to file and serve their responses and written submissions to the Application dated 17th March 2025 within 30 days from the date of this Ruling.
- iv. The Petitioner shall pay the 1st Respondent thrown away costs of Ksh 20000 for the application .

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23RD DAY OF APRIL 2026.

JUDY OMANGE

JUDGE.

IN THE PRESENCE

Ms. Mwaura for the 1st Respondent.

Peter – Court Assistant.

