



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyakangi v Attorney General & 5 others (Environment and Land  
Petition 1 of 2021) [2026] KEELC 2645 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2645 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND PETITION 1 OF 2021**

**DO OHUNGO, J**

**MAY 6, 2026**

**BETWEEN**

**CHARLES OKEMWA NYAKANGI ..... PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF PUBLIC HEALTH AND  
SANITATION ..... 2<sup>ND</sup> RESPONDENT**

**THE CONSTITUENCY DEVELOPMENT FUND (WEST MUGIRANGO) .... 3<sup>RD</sup>  
RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**NYAMOKENYE HEALTH CENTRE ..... 5<sup>TH</sup> RESPONDENT**

**COUNTY SURVEYOR, NYAMIRA COUNTY ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This petition was dismissed with costs for non-attendance by the Petitioner and his counsel on 25<sup>th</sup> February 2026. Subsequently, the Petitioner filed Notice of Motion dated 26<sup>th</sup> February 2026 seeking the following orders:
  1. That Honorable Court be pleased to set aside its orders made on 25<sup>th</sup> February 2026 dismissing the Petitioner's suit and all other consequential orders thereto.
  2. This Honourable Court be pleased to reinstate the Petitioner's suit.
  3. Costs of this application be in the cause.



2. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Petitioner. He deposed that failure to attend Court was due to his advocates on record having erroneously diarised the date as 26<sup>th</sup> February 2026 instead of 25<sup>th</sup> February 2026. He added that he also did not attend Court since he also believed that the matter would come up for hearing on 26<sup>th</sup> February 2026. He further deposed that failure to attend Court was not deliberate but due to an honest mistake on the part of his counsel, which should not be visited on him.
3. The First, Second, Fourth and Sixth Respondents responded to the application through Grounds of Opposition dated 10<sup>th</sup> March 2026 in which they contended that the Petitioner/Applicant and his Advocate on record had not disclosed any justifiable reason for their non-attendance despite having sufficient notice of the hearing date of 25<sup>th</sup> February 2026 which was fixed by consent of the parties, that equity aids the vigilant and not the indolent, that the application did not meet the threshold for review, that the application was not supported by evidence or law and that the First, Second, Fourth and Sixth Respondents would be highly prejudiced if the application is allowed. They further contended that the application was an afterthought, lacked merit and amounted to a complete abuse of the Court process.
4. The application was canvassed through written submissions. The Petitioner/Applicant filed submissions dated 7<sup>th</sup> April 2026 while the First, Second, Fourth and Sixth Respondents filed submissions dated 14<sup>th</sup> April 2026. None of the other parties filed any submissions either at all or within the timelines that were given.
5. I have carefully considered the application, the affidavits, the Grounds of Opposition and the submissions. The sole issue for determination is whether the order of dismissal made on 25<sup>th</sup> February 2026, and all consequential orders should be set aside.
6. When considering an application for setting aside in circumstances where a hearing date was fixed in the presence of the Applicant's Counsel, as is the case herein, the Court is called upon to exercise discretion pursuant to the principles laid down in *Mbogoh & Another v. Shah* [1968] EA 93 and reiterated in *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another* [2016] eKLR. The Court has unfettered discretion and will consider such factors as the reason for the failure to attend Court, the length of time that has elapsed since the dismissal, the respective prejudice each party is likely to suffer and whether it is in the interest of justice to grant setting aside. The Court's discretion is to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake, but not to assist a person who has deliberately sought to obstruct or delay the cause of justice.
7. The Petitioner/Applicant has attributed failure to attend Court to an erroneous diary entry by his advocates on record which resulted in the hearing date being diarised as 26<sup>th</sup> February 2026 instead of 25<sup>th</sup> February 2026. I am aware that the hearing date was given on 26<sup>th</sup> November 2025 through virtual proceedings conducted on Microsoft Teams. It is entirely possible in such proceedings for 25<sup>th</sup> and 26<sup>th</sup> to be mistaken for each other due to the closeness in the sounds. I have no reason to doubt the Petitioner/Applicant's explanation. Thus, the reason for the failure to attend Court is a plausible one.
8. The Court is also required to consider the length of time that has elapsed since the dismissal. On that limb, I note that the dismissal was on 25<sup>th</sup> February 2026 while the present application was filed two days later on 27<sup>th</sup> February 2026. There was no unreasonable delay.
9. Regarding possible prejudice to the parties, I note that the petition is partly heard. The evidence of PW1 has been taken. Given the explanation tendered, there would be prejudice to the Petitioner/Applicant if the matter is summarily concluded at this point. On the other hand, the Respondents



who have opposed the application can be compensated through an award of costs. Overall, I find that it is in the interest of justice to grant setting aside.

10. In view of the foregoing discourse, I find merit in Notice of Motion dated 26<sup>th</sup> February 2026. I set aside the order made on 25<sup>th</sup> February 2026 dismissing the petition and all consequential orders arising therefrom. The First, Second, Fourth and Sixth Respondents shall have costs of the application.

**DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 6<sup>TH</sup> DAY OF MAY 2026.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

Ms Amisi for the Petitioner

No appearance for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents

Mr Omwenga for the 3<sup>rd</sup> Respondent

Ms Moeche for the 5<sup>th</sup> Respondent

Court Assistant: B Kerubo

