



**Mumo v Muema (Environment and Land Case E004 of 2023)  
[2025] KEELC 5459 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5459 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND CASE E004 OF 2023**

**EO OBAGA, J  
JULY 23, 2025**

**BETWEEN**

**JOHN WAMBUA MUMO ..... APPLICANT**

**AND**

**CECILIA MUEMA ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 4<sup>th</sup> October, 2024 in which the Defendant/Applicant seeks setting aside the orders of 21<sup>st</sup> June, 2024 and that she be allowed to file a defence to the Plaintiff/Respondent's claim. The Applicant contends that she was not served with summons to enter appearance. The Applicant contends that this suit is similar to another one being ELC No. 306 of 2017 which is decided.
2. The Applicant's application was opposed by the Respondent through a replying affidavit sworn on 28<sup>th</sup> October, 2024. The Respondent contends that ELC No. 306 of 2017 is different from this suit as the parties in that suit were different from the parties in this suit.
3. The Respondent states that there was proper service of summons and that the Applicant has not met the threshold for setting aside the orders issued on 21<sup>st</sup> June, 2024 and that the sole purpose of this application is to delay the enjoyment of the fruits of the judgment in favour of the Respondent.
4. In a further affidavit sworn on 17<sup>th</sup> February, 2025, the Applicant states that she is the mother of Peter Musyoka Muema who was litigating with the Respondent and that the court granted the suit property to her son.
5. The parties were directed to file written submissions. The Applicant filed her submissions dated 8<sup>th</sup> March, 2025. She submitted that she was not served with summons to enter appearance, that this case is similar to Makueni ELC No. 306 of 2017 which was between the Respondent and her son Peter Musyoka Muema where her son won the case. She stated that she is on the land as an agent of her son.



6. The Respondent filed his submissions dated 17<sup>th</sup> March, 2025. He submitted that this application is res judicata as what the Applicant is raising was settled in Makueni High Court Succession Cause No. 45 of 2004. He further submitted that he has a valid title and that the Applicant's application is an abuse of the process of court.
7. The Respondent further submitted that the Applicant should have filed an appeal against the decision of Makueni High Court Succession Cause No. 45 of 2004. He further submitted that before the court allowed the case to proceed as undefended, the court was satisfied that there was proper service of summons to enter appearance. He relied on the case of Gulf Fabricators –vs- County Government of Siaya (2020) eKLR.
8. The Respondent also relied on the case of James Kanyiita Nderitu & Another –vs- Marios Philotas Gbikas & Another (2016) eKLR.
9. I have carefully considered the Applicant's application, the opposition to the same by the Respondent, the submissions filed as well as the authorities cited. The only issue for determination is whether the orders issued on 21<sup>st</sup> June, 2024 together with the judgment of 6<sup>th</sup> March, 2024 should be set aside.
10. The orders which were issued on 21<sup>st</sup> June, 2024 were as a result of execution which arose from the exparte judgment of this court given on 6<sup>th</sup> March, 2024. It was alleged that the Applicant had been served with summons to enter appearance on 14<sup>th</sup> February, 2023. The process server who alleged to have served summons to enter appearance is one Ali Simba Kalii who swore an affidavit of service on 14<sup>th</sup> February, 2023.
11. In this affidavit, the process server claims to have served the Applicant at her home and that the Applicant accepted service but declined to sign the summons arguing that there was a similar case being ELC No. 306 of 2017 which was won by the Plaintiff and that the area chief was aware of the same.
12. The process server did not disclose in the affidavit of service how he identified the Applicant. The manner of identification is very crucial and should always be stated in any affidavit. Without this, the affidavit of service remains doubtful and cannot pass for a proper affidavit.
13. It is very doubtful that the Applicant would have vividly recalled that there was ELC 306 of 2017 which they had won as the process server claims. The suit was filed by the Applicant's son. This being the case, I find that there was no service of summons to enter appearance. The inclusion of ELC 306 of 2017 in the affidavit was to give it a semblance of proper service. This being the case, the judgment delivered on 6<sup>th</sup> March, 2024 was an irregular one and has to be set aside *ex debito justitiae*.
14. Consequently, I allow the Applicant's application by setting aside the judgment of 6<sup>th</sup> March, 2024 together with all consequential orders including the orders issued on 21<sup>st</sup> June, 2024. The Applicant is given unconditional leave to file a defence to the Respondent's claim within 14 days. The costs of this application shall be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23<sup>RD</sup> DAY OF JULY, 2025.**

.....  
**HON. E. O. OBAGA**

**JUDGE**

In the absence of parties who were aware of the date of delivery of ruling.



