



Wanyonyi & 2 others v County Government of Trans Nzoia & 3 others (Environment & Land Case 47 of 2021) [2025] KEELC 932 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 932 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 47 OF 2021
FO NYAGAKA, J
FEBRUARY 27, 2025**

BETWEEN

ISAIAH WANYONYI & 2 OTHERS PLAINTIFF

AND

THE COUNTY GOVERNMENT OF TRANS NZOIA 1ST DEFENDANT

GH TANNA AND SONS LTD 2ND DEFENDANT

BARNABAS KEIINO NGETICH 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. Among the things that generally puzzle the learned judge is the fact that in life exist innumerable cases of people who, despite receiving numerous clear pieces of advice through instruction, personal experience, readings and sermons even from the very source of wisdom who is God Himself, talks, career guides and other sources, and they profess to know and follow God’s instruction, rarely make positive use of them. What you are about to read on what the professed man of God did in relation to the instant application, though sounding like a scene from one of the movies of Hollywood or “Nollywood” at best or worst, could not be expected of one who leads or claims to lead the flock of God towards Him. That is why this Court is still mesmerized at what could drive the Applicant to go to such lengths as he did, with the intention of circumventing the truth.
2. Through the actions of the man of God herein, this Court has come to humbly believe that when the Holy Bible says many are called but few are chosen (Mathew 22:14) and then loudly asks about where sinners will be found if it be extremely difficult for the righteous to be saved, it is real. For the Holy Book, in 1 Peter 4: 17 says, "For it is time for judgment to begin with God’s household; and if it begins with us, what will be the outcome for those who do not obey the gospel of God?", it poses an extremely hard pertinent question. And, indeed, if those who profess to be holy will scarcely be saved, what will



be the end of those who slight the message of salvation or care less about it? This Court is still thinking about such will be, as it now moves to summarize the issues herein.

3. On 24th October 2023, this Court dismissed the instant suit for want of prosecution. The Court awarded the costs of the suit to the 2nd Defendant who was in attendance, through learned counsel, during the hearing of the Notice to Show Cause. It then filed a Party and Party Bill of Costs dated 11th December 2023 and fixed it for taxation before the Deputy Registrar on 12th January 2024. On the material date the taxation proceeded, and the taxing master scheduled the ruling for 26th January 2024.
4. Before the Ruling could be delivered, on 23rd January 2024, the Plaintiffs moved this Court vide an application dated the same date. Its main prayer ultimately was to set aside the orders made on 24th October 2023. That application was the instant one. It was brought under Section 3A of the Civil Procedure Act, Order 22 Rule 51, Order 40, Order 45, Order 18 Rule 10, Order 42 Rule 1 and Order 51 of the Civil Procedure Rules, 2010, Section 146(4) of the Evidence Act, Chapter 80 of the Laws of Kenya, Article 53(2 and Article 159(2) of the Constitution and all other enabling provisions of the law. They sought the following Orders: -
 1. ...Spent
 2. That the honorable court be pleased to review an offset aside its orders issued on 24th October 2023 dismissing the suit he had in together with all the consequential. Upon the turning new material facts herein.
 3. ...Spent
 4. That this could be placed to reinstate the suit for hearing and determination on merits.
5. The application was based on 12 grounds set out in the body thereof. Briefly, they were that on 24th October 2023 the matter was placed before the judge for explanation why it should not be dismissed for want of prosecution. There being no explanation, it was dismissed for want of prosecution. The 2nd Respondent filed a notice of taxation dated December 2023 and a Bill of Costs dated the same date and fixed it for taxation on 12th January 2024. The ruling on the taxation of the Bill due on 26th January 2024. The suit was relatively fresh by the time it was dismissed, having not proceeded past the Pre-trial Conference stage.
6. Further, it was a serious suit pertaining to ownership of property worth millions of shillings which required examination of evidence through a hearing to lead the court to determine the merits thereof. Given the seriousness of the matter, the Plaintiffs had been trying to obtain vital documents such as the green book, relevant maps, official searches and old government allotment letters, which process unfortunately took time. The delay in the prosecution of the case was not inordinate or malicious.
7. If the order of dismissal was enforced together with the taxation ruling, the plaintiffs could have been condemned unheard. The Respondents would not suffer any prejudice if the orders were granted. The plaintiffs were bound to suffer irreparable damage and loss of property if the orders were not granted. It was in the interest of justice that the orders be granted, and the application allowed.
8. The application was supported by an affidavit sworn by all the three Plaintiffs on 23rd January 2024. It repeated the contents of the grounds in support of the application, except that to it they annexed a copy of a Draft of Supplementary List of Documents and Bundle of Documents (only a List and attached copies of documents) which they annexed and marked as IRW-1.
9. The application was opposed through a Replying Affidavit sworn by David N. Onyancha, learned counsel for the 2nd Defendant on 31st January 2024. He stated that when the suit was filed on 16th



- September 2021, Summons to Enter Appearance were issued on 17th September 2021. The 2nd Defendant was served with the Summons to Enter Appearance together with the Plaint, Lists of Witnesses and Documents. It filed its Defense with witnesses' Statements and Lists of witnesses and documents on 14th December 2021. It served them on the Plaintiffs' advocates on the 15th December 2021. He attached and marked as DNO-1 a copy of an E-mail dispatch message on the same.
10. On 14th December 2021 it prepared its trial bundle. Despite its serious concerted efforts to make the suit progress, the Plaintiffs were indolent and not doing anything to prepare for trial until the dismissal of the suit on 24th October 2023. There was no evidence Summons to Enter Appearance were served on the 3rd and 4th Defendants since the time they were issued, another demonstration that the plaintiffs were indolent.
 11. This suit was fixed for a mention on 5th October 2023, but the plaintiffs' counsel did not appear. Therefore, it was fixed for Notice to Show Cause Why it should not be dismissed on 24th October 2023. Counsel for the Plaintiff was served. He (counsel) did not appear, hence the dismissal for want of prosecution. The second defendant filed its Bill of costs on 11th December 2023 and served it for hearing on 12th January 2024. The Notice of Taxation was served on the Plaintiffs' advocate on 19th December 2023. Despite the service of the Notice, the applicants never took a step and for over a month before filing the instant application.
 12. The applicants had not given any plausible reason why they did not attend court on 24th October 2023 when the suit was dismissed. There was no explanation for lack of service of Summons to Enter Appearance on the 3rd and 4th defendants.
 13. The annexure marked IRW-1 to the Supporting Affidavit had no evidentiary value since the documents referred to were filed together with the Plaint on 16/09/2021. In the absence of a cogent explanation why the suit had been inactive since 16th September 2021, the Court exercised discretion properly in dismissing the suit for want of prosecution. The applicants did not satisfy the conditions set out under Order 45 Rule 10(1(a) and (b) of the Civil Procedure Rules to warrant grant of the orders sought.
 14. The 1st Respondent filed a Replying Affidavit sworn by learned counsel, Zephania K. Yego on 28th March 2024. He deposed that the Plaintiffs filed the suit on 13th September 2021. They sought four reliefs, which the deponent reproduced in the Affidavit. He added that the 1st Defendant entered Appearance on 18th January 2022 and filed their Defense on 9th February 2022. The Plaintiff's lost interest in prosecuting the suit after filing and did not set it down for hearing. On 5th October 2023, when the matter came up for mention, both the Plaintiffs and their Advocate were absent in court. Therefore, the Court gave another date of 24th October 2024 for notice to show cause why the suit ought not to be dismissed for want of prosecution. On the latter date the plaintiffs and their advocates were absent and therefore the suit was dismissed for want of prosecution. The court should not reinstate the suit because the plaintiffs had lost interest in it because they did not set it down for hearing as required under Order 11 of the Civil Procedure Rules.
 15. The delay in prosecuting the suit was inordinate. Contrary to the plaintiffs' deposition, at no point in time before the suit was dismissed did they or their advocates bring to the attention of the court or the other parties that they were in the process of obtaining vital evidence and were experiencing unforeseeable challenges. The plaintiffs had not produced evidence to show that the alleged vital evidence took three (3) years to obtain from the time of filing the suit to 23rd January 2024 when they filed their application.



16. Further, the documents referred to in and together with the Supplementary List in support of the claim were not annexed to the Supporting Affidavit of the application. Equity aids the vigilant and not the indolent. The plaintiffs had themselves to blame for the dismissal of the suit since they had not made any efforts towards prosecuting the matter or setting it down for hearing.
17. Contrary to the allegations that the Defendants would suffer no prejudice if the suit was reinstated the 2nd Defendant would suffer irreparable damage and loss because through a judgment delivered in Kitale ELC 64 of 2011, Boaz Kipchumba Kaino v. G. H. Tana and Sons Limited, the second defendant was declared the lawful owner of the suit parcel of land known as Kitale Municipality Block 4/364 which the plaintiff now sought to cancel because the then title was fraudulently obtained. In line with the judgment in the said concluded matter, the titles known as Kitale Municipality Block 4/441 and 442 of which the plaintiffs sought to enforce ownership were cancelled and there was no appeal or subsequent orders overturning the judgment of the Honourable Court as against the second defendant.
18. In line with Article 50(2)(e) of *the Constitution*, every person had their right to a fair trial, which included the right to have the trial to begin and conclude without unreasonable delay. The Plaintiffs had not brought any sufficient or cogent reasons for the delay between the time they filed the suit and when it was dismissed. Therefore, the dismissal ought not to be set aside.
19. Following the response, the Plaintiffs filed a Further Affidavit sworn by the 1st Plaintiff only on 15th April 2024. He stated that he had the consent of the second and third plaintiffs to swear it on their behalf. He deposed that he had read and understood the Replying Affidavit is sworn by Zephaniah K. Yego on 23rd January 2024. The Affidavit contained falsehoods, was ridiculous and misleading. The delay in fixing the matter for hearing was caused by the delay in the rectification and obtaining of primary material evidence essential to prosecuting the plaintiffs' case. Further, the material evidence included titled documents to the suit property being Kitale Municipality Block 4/441 and 4/442 that had been pending rectification at the Land Registrar's office in Trans Nzoia for more than four (4) years. The rectification of the property titles was only completed on the 18th March 2024. He attached and marked IW-1 and 2 copies of two letters dated 18th March 2024 confirming the rectification.
20. Further, the plaintiffs had since obtained the correct documents bearing both names and identification numbers of the registered property proprietors. He annexed and marked IW-3 and 4 copies of Certificates of Lease for Kitale Municipality Block 4/441 and 4/442. He added that he had conducted a current search showing the said rectifications. He attached and marked IW-5 and 6 copies of such Certificates of Official Search dated 3rd April 2024 in respect of the suit properties. He added that it was beyond any doubt that material evidence necessary for prosecuting the suit were missing at the point of filing the suit. The plaintiffs had not been indolent, nor had they delayed, in bad faith, to prosecute the suit. They had no power whatsoever in the rectification or processing of public documents and as such would not have occurred, the said delay.
21. The 2nd Plaintiff, with the leave of the Court, swore a Further Affidavit on 22nd July 2024. He deposed that he had given authority to the first plaintiff to swear the Affidavit he made on 15th April 2024 and any other pleadings thereof. He added that he confirmed and verified the contents of the 1st Plaintiff's Further Affidavit sworn on 15th April 2024. He was aware that the delay in rectifying the title documents at the Land Registry and obtaining the primary material evidence essential in prosecuting the case had delayed. It was within his knowledge that the rectifications were finalized on 18th March 2024. He was aware that without rectification of the said documents the suit would have been obsolete. He had given the 1st Plaintiff authority to follow up and execute every other document pertaining to the suit. He confirmed that the position deposed to in the Further Affidavits sworn on 15th April 2024 was true.



22. Similarly, the third defendant, with leave of the Court, swore an affidavit on the said date – the 22nd July 2024 – in which he replicated virtually everything that the 2nd Plaintiff deposed to in the affidavit sworn on the same date except that he changed paragraph 6 thereof to say that without the rectification of the documents the suit would have been rendered nugatory. Thus, this Court need not repeat the contents thereof but will consider them fully in the determination.
23. Upon the documents annexed to the Further Affidavit sworn by the 1st plaintiff, 15th April 2024, together with the said Affidavit being presented through the Deputy Registrar of the Court to the Lands Office, Trans Nzoia County where the copies of the documents were alleged to have been made for it to confirm the contents thereof, both the Land Registrar in charge of office and his Assistant Land Registrar whose signature and the name were contained on a number of the documents filed Affidavits in response to.
24. The Land Registrar in charge of the office, one Philip Makini (hereinafter referred to as “male land registrar”), swore his Affidavit on 29th July 2024. He deposed that, upon receiving instructions to confirm the authenticity of the documents annexed to the further Affidavit (of the 1st Plaintiff), out of the seven signatories to the two letters dated 18th March 2024 in respect of Kitale Municipality Block 4/441 and 442, only two were employees of the Ministry (of Lands, Public Works Housing and Urban Development) where he worked. Further, one of the signatories, Dominic Mude(k) (sic) was an employee with the Ministry working as a Land Administration Officer, and one Naomi(y) (sic) Rop was a land registrar. The other five signatories were strangers to the State Department of Lands and Physical Planning, particularly the Trans Nzoia County.
25. Further, the two letters did not emanate from his office. The office had never convened a meeting, and to come up with a resolution to draft a letter like the one attached to the Affidavit. The letter was not authentic, but a forgery and all the information contained therein was untrue and misleading. The leases attached to the letter were also a forgery and had not been issued by the office. He attached copies of copies of white cards in respect of parcels Kitale Municipality Block 4/441 and 4/442 to show that the titles to the two parcels of land were cancelled through the decree of this Court dated 30th May 2017 issued in Kitale ELC No. 64 2011. Therefore, they no longer existed.
26. He also deposed the Registry Index Map (RIM) was amended after the cancellation and therefore the two parcels of land were no longer reflected on it, and a letter dated 17th October 2022 from the Director of Surveys, copied to the Land Registry in Kitale had been written. He attached the letter to confirm that. He offered to testify orally if and when called upon to do so.
27. The other Land Registrar, Naomi Rop (hereinafter referred to as “the female land registrar”), swore her affidavit on 29th July 2024. She deposed that she was an employee of the Ministry and was then working Trans Nzoia County since December 2020. She deposed further that the two letters dated 18th March 2024 did not emanate from the office of the Land Registrar, Trans Nzoia County, and the signature thereon purporting to be hers was not hers but forged. The two certificates of official Search dated 3rd April 2024 did not emanate from the office and were also forged. She referred to the certified copies of white cards in respect of parcel numbers Kitale Municipality Block 4/441 and 442. She also attached copies of the relevant page of the Dispatch of Search Register for the dates the two certificates of official search were purported to have been issued. She offered to testify orally if called upon to do so.
28. The plaintiffs applied to cross-examine the Land Registrars while the Court called upon them to clarify some of the issues raised in the affidavits. Thus, in all the three Plaintiffs and two land registrars gave oral accounts of the issues.



29. The 1st Plaintiff testified that he filed his Affidavit and attached copies of the documents to it. He deposed that he stood by the contents of the affidavit, attaching the certificates of lease, the certificates of official search and letters thereto all of which he obtained from the 2nd Plaintiff who informed him that he had been given them by one Naomi of the Land Registry. He did not doubt the information.
30. On cross-examination he deposed that the 2nd Plaintiff gave him the documents, but he did not know who had signed them. Further, he had read the Affidavits of the two land registrars. They had content that the two title deeds for the two parcels of land in question, being Kitale Municipality Block 1/441 and 442, had been cancelled. He added that he and the other Plaintiffs were not involved in the case, it being Kitale ELC No. 64 of 2011 whose decree cancelled the two title deeds. Lastly, the letter that accompanied the affidavit bore signatures, but no one barred him from getting the signatories thereof to swear affidavits to confirm that they indeed signed the letters.
31. In re-examination he stated that the two title deeds cancelled were not in their (Plaintiffs') and they were not parties to the suit in which they were cancelled. He insisted that their titles, which they now had in their possession, had never been cancelled and they processed them in the recent past.
32. The third plaintiff testified that he wished to and adopted the testimony of the first plaintiff. On cross-examination he stated that everything that the second plaintiff did was in his absence. He only informed and showed him the outcome. He believed that the documents were issued by the Lands Office. He added that the sums of money the 2nd Plaintiff used to give out were from contributions that the three of them made. He could not be able to say how much he personally contributed, although he estimated it to be Kenya Shillings 500,000/=.
33. The 2nd Plaintiff has a sensational account of the transactions leading to the instant application. He stated that he was a Bishop of Revival and Salvation Ministries based in Kitale. He admitted that he was the one who gave out the papers whose copies were annexed to the Affidavit. He listed the documents as the two letters in issue, the certificates of official search and others.
34. His testimony was that the documents were given to him by a person who identified herself in the name of the female land registrar. He added that the person who identified the said female land registrar and the male land registrar (the two alleged land registrars he dealt with) was known as Leonard Moss. Leonard Moss had been introduced to him by a person who worked in the Kitale Survey office. The person's name was Mr. Soita. Mr. Soita informed him that Leonard Moss worked with the Office of Survey in Nairobi. He talked (presumably on phone) to Leonard Moss who in turn introduced him to the alleged land male registrar.
35. Regarding the letter written over parcel numbers 441 and 442, he stated that their origin was that the leases the alleged Land Registrars gave at first did not contain prints of the Plaintiffs' Identity Card numbers. The documents were given to him by the person who had been identified as and in the name of the male land registrar, the alleged Land Registrar. When that came up, the alleged 'Land Registrar' called another land registrar in Nairobi whose name was Dominic Chumba to act. The 2nd Plaintiff recorded the conversations between the two registrars. The alleged male land registrar brought the leases to Kitale. When he reached "he stepped aside" and introduced him to the second land registrar named above, the lady. The lady Land Registrar took the leases to him at the Elgon View Hotel on 29/03/2024. He went and met the said "land registrar" and Mr. Leonard Moss about 07:30 PM on the material date.
36. The Land Registrar gave him the leases. The second plaintiff had all along dealt with the male land registrar whom he paid the sum of Kenya shillings 800,000 in cash. For the additional sum of money, he sent it to people whom the said Land Registrar told him to send to. He also sent another sum of Kshs.



- 3,000,000/= to people in Nairobi. He added that in total he gave a sum of Kenya shillings 1,000,000/= to the male land registrar.
37. When the leases were ready from Nairobi, the male Land Registrar informed him that he no longer dealt with the transaction. Then on 20th March 2024 Leonard Moss called the 2nd Plaintiff. Leonard Moss said he was in the company of the female land registrar. He gave the female land registrar the phone. The female land registrar informed him that, “All the letters are completed.” The conversation took place on 27th March 2024. The female land registrar informed him that she was giving Leonard Moss the letters to give him. She stated that she and Leonard were having lunch at Eureka Hotel in Kitale, and he should go and meet them. Leonard informed the 2nd Plaintiff that four (4) land registrars had signed the letter and a Valuer. Leonard added that he then was to give the letters to the 2nd Plaintiff letters to sign for them so that each keeps a copy. He was to make copies and bring them back to them to keep copies.
38. Later, about lunchtime Leonard called the 2nd Plaintiff, saying that he was with the female land registrar, and they were having lunch. They asked him to go and meet them at the Eureka Hotel. This 2nd Plaintiff went there. He waited but the two were not in the hotel. Leonard once more informed him that they were waiting outside in the car. He looked to the side, and indeed he saw the two in a car parked next to Makuti Hotel. Leonard was in the steering wheel. The female land registrar had the letters. They told him to sign for them. He did while using the top of the bonnet as a table. The two instructed him to make a copy of the letters, which he did. He gave them the two copies of the letters and the money they wanted. He gave the money to Leonard. The female land registrar and Leonard then left. When they reached their destination, the female land registrar called him, quarreling that he had given a smaller sum than agreed.
39. He added that all the documents he produced in court by affidavit were given to him by the female land registrar. She directed him on how, where and to whom to pay the sums of money he paid and through what means to do so. He added that in total the sum paid through Leonard was Kshs. 3,300,000/=. On 2nd April 2024 the female land registrar called him again through a number which was an office line whose line code was (020). She informed him that the documents were complete. She handed the phone to a land officer whom she did not introduce, but the officer talked with the 2nd Plaintiff for about 9:02 minutes. He informed her that all the documents were now ready. He asked him to pay a sum of Kenya Shillings 400,000/=. He stated that in total he met the female land registrar three times, being at the Elgon View Hotel, Meta Hotel and Makuti Hotel.
40. He added that he did not know the land registrars of Kitale. He only knew the female and male land registrars he dealt with upon introduction. Further, after he received the letters which were signed by many people, he met Leonard. Leonard informed him that the female land registrar had advised him to ask the 2nd Plaintiff to now present the papers to court and “the judge would believe our case.”
41. Of the status regarding parcel numbers 441 and 442 he testified that he only knew later that they were cancelled. However, he and the other plaintiffs were in occupation and had built shops on the parcels. The case that decreed the cancellation of the titles involved other persons, other proprietors, other than them. The alleged owner was Boaz Kaino Kipchumba whom he had never met.
42. In cross-examination, insisted he was telling the truth. He admitted he had never gone to the Land's office because the Land Registrar himself referred him to meet Leonard. His testimony was that he had recordings of the Land Registrar telling him, “I will come to Kitale soon, but I take the documents.” Later, the story changed. He repeated that he had recordings of every conversation between the alleged land registrars or other people he dealt with in the process.



43. The witness added that he gave the male land registrar Kshs. 1.1 million and the female land registrar Kshs. 3.3 million. Further, at one time the female land registrar instructed him to give her driver, someone called Samuel, part of the money which he did. The total of the money he spent on the entire exercise (that is to say, to get the title deeds processed and the letters and searches, excluding stamp duty if ever it was paid) was Kshs. 4.5 million.
44. Upon being referred to the annexures IW-1 and IW2 to the Further Affidavit, sworn by the 1st Plaintiff on 15th April 2024, being the letters undated bearing seven (7) signatures and allegedly received on 18th March 2024 at the “Ministry of Lands Trans Nzoia County” (as the stamp bearing the date), he stated that the last name, identity card and signature on each of them were his.
45. He admitted on further cross-examination that he did not include all the information he now stated on oath in the affidavits he swore. Further, the two title deeds he had in respect of the suit parcels of land, No. 441 and 442, were issued on 27/11/2020 by a Land Registrar named N. O. Odhiambo yet the letters accompanying them (i.e. annexures IW1 and IW2) bearing the letterhead of the Ministry were dated 18/03/2024. He admitted he was not present to see all the six (6) other signatories to the letters sign. He admitted further that before he began the entire transaction process in issue, he neither knew Leonard Moss nor the female and male land registrars he dealt with.
46. His further oral account was that he dealt with Leonard first, and as they went on Leonard introduced to him both the male and female land registrars he named earlier. He (the 2nd Plaintiff) had never gone to the lands office to confirm with the offices’ desks where the names Naomi and Philip were written that the persons he dealt with were indeed the land registrars known by those names. He gave the reason for that that he did not doubt Leonard, but he recorded the calls and discussions of the meetings he had with them. He gave the reason for the recordings as being cautious as a human being since human beings were likely to change their minds over certain issues. Thus, the records were to be his evidence. He stated that he did not take photos of the people he dealt with.
47. He admitted further that he dealt with Leonard as a broker because when he went to the office of survey in Kitale but not the lands office, he first met the receptionist whom upon explaining to her that he wanted to make the papers in issue, she told him she would call for him a “mkubwa” (may be meaning “boss” or “chef”). Then a person emerged from the opposite side and when he (2nd Plaintiff) asked to know his name, he introduced himself as Mr. Soita. Mr. Soita informed him that he would give the person to help him his (2nd Plaintiff’s) name. Then at 3 PM of that day Leonard Moss called him (2nd Plaintiff) and the transactions started.
48. He admitted that the letters given to him (i.e. annexures IW1 and IW2) did not bear the office numbers or even the identity cards of the signatories. Further, he admitted that all other official documents issued bore the employment number of the land registrar known as Naomi (to identify the officer specifically).
49. In re-examination, he stated that he did not believe that he was defrauded. He insisted that he knew both the female and male land registrars. He asked that the phone recordings be taken for forensic examination, whose results would be the only ones to convince him that he was defrauded. He added that he and the 3rd Plaintiff had given the 1st Plaintiff authority to put down the information (to the court). He added that he and the alleged land officers met in the hotels because he did not know the law regarding land matters. The only thing he needed were documents regarding his parcel of land.
50. He did not learn early that he ought to have gone to their land offices to obtain the documents from there. All he knew was that once the documents were ready, he would receive them at any place. Further, he did not know that land registrars ought to include their employment numbers on (official)



- documents they signed. He recorded the transactions on the phone automatically. He had since given information to the Directorate of Criminal Investigation Office (DCIO) to follow up.
51. The Court gave an opportunity to the land registrars to testify in court and cross-examined on their affidavits they filed, to test their veracity.
 52. Mr. Makini, the Land Registrar in charge of Trans Nzoia County testified that he swore the affidavit he filed. It contained the truth. Regarding the documents in issue, that is to say, the ones whose copies were attached to the affidavit sworn by Isaiah Wanyonyi, he stated that they were unfamiliar to him and even the people who signed them were unfamiliar. He added that he had never met the person who alleged to have met him or even received calls from him. He added that as a land registrar, he reported to Kitale in August 2023. Lastly, he added that he had seen the copies of the titles claimed by the Plaintiffs to have been issued by the office. He stated that they purported to be issued in 2022.
 53. On the cross-examination by the plaintiffs' advocates he stated that the letters referred to in the affidavit by the 1st Plaintiff did not emanate from the Lands Office. It was a forgery. Further, the people who signed the letters were unfamiliar to him. When he was referred to the letter regarding parcel 441, he stated that he knew Naomi Rop. She was familiar to him, but the signature on the document purporting to be hers was not hers. The said officer was one of the land registrars in his office. He denied being a handwriting or signature expert in stating that the signature on the documents did not belong to the land registrar, Naomi Drop.
 54. He added, the titles in issue were cancelled in 2017 through ELC Case No. 64 of 2011. The Plaintiffs were not parties in the suit but the name of the parcel whose registration was cancelled was not one of the Plaintiffs but Boaz Kipchumba Kaino.
 55. He added that the land registrar referred to in the title deeds held by the Plaintiffs was one N. O. Odhiambo who was working in Kitale at the time. But the witness could not verify or state whether the signature on the document was Mr. Odhiambo's. Further, his office had not taken any steps to report to the police the issues on the two leases because they were not registered in their offices. There were no white cards of the same in their office.
 56. Upon further cross-examination, he stated that he had (in the office) the register of the two parcels of land, namely, parcel No. 441 and 442. He added that before a lease would be issued, there was a clear procedure to be followed. Further, no individual had applied for documents in relation to the two parcels of land. Then he gave briefly the procedure often followed, as follows:-
 57. That whenever the office wants to issue an instrument to a person, the Land Registrar himself or another colleague goes to Nairobi to collect the documents. When he collects the leases, he records them, their reference numbers and the owner of the property in a register. Alternatively, the individuals may be advised to go to Nairobi and collect them. When that happens, the individuals are directed to go back to the Kitale offices with their letters for the leases to collect the leases.
 58. Then he added that for the two files in reference to the two parcels of land, no such letter (from the Nairobi offices or otherwise) existed. He insisted that the office did not have the white cards for the two parcels of land in issue, in the names of the three Plaintiffs (whom he named). His office did not have any such records. The records the office had regarding the parcels were those of the cancellation of the titles through the decree of the court in 2017. They were in the name of Boaz Kipchumba Kaino. They were cancelled and reverted to the original number which was No. 336.
 59. Regarding the document dated 18/03/2024, the witness stated that the person known as Dominic Mude did not work with the Lands Offices in Trans Nzoia. So, it was for Josephine Murimi, Peter Mokaya, Andrew Kayi Luvisi and Lydia Otieno.



60. About the title deeds cancelled and the ones held by the Plaintiffs, the Land Registrar testified that there can never be two title deeds bearing different registration names over the same parcel of land at the same time. He insisted he never knew or met or even ever seen the 2nd Plaintiff.
61. The other Land Registrar, Ms. Rop, too testified. She stated that she had since been transferred to Uasin Gishu County from the Trans Nzoia County Land Registry. She stated that she stood by the content of her affidavit which she swore on 29/07/2024 and filed in the matter. About the evidence by the 2nd Plaintiff, she stated that it was pure lies and there was nothing truthful in it.
62. On cross-examination she stated that she swore her affidavit upon perusing the two letters dated 18/03/2024 and the two leases attached to the letters. She added that the contents in the Plaintiff's affidavits shocked her. She stated that her name was Naomi Rop and not Naomy Rop (difference being the last letter to the name Naomi). Regarding the signature, on each letter, below the name purporting to be hers she added that it was not hers. She knew her signature well. But she had not filed a handwriting expert report to indicate that the signature on the letters was not hers. She added that she had not done so because the said signature had never been hers. Further, she had not made a report to the investigative agencies about the letters.
63. Regarding the two leases attached to the letters, she stated that they showed that they were signed by N. O. Odhiambo. She could not tell whether the No. 286 was his employment number. The lands office in Kitale did not contact him to confirm whether the signatures on the documents were his and she could not tell whether he knew about the matter.
64. About the parcels Nos. 441 and 442 she too stated that they used to exist but were cancelled through a court decree. She could not confirm whose names were on the cancelled titles. When refreshed from the Affidavit of the other land registrar she stated that the name was that of Boaz Kipchumba Kaino as per the white cards he annexed to it. She could not tell if the land registrar was a party to the proceedings (leading to the cancellation).
65. On further cross-examination the witness stated that she had appeared in person (on camera) so that the Plaintiffs could confirm if they had ever involved her in the alleged transactions they made. About issuance of documents by the lands office, she stated that it was done only in the office, and anyone who was to obtain one would have to personally go to the office to be given it.
66. She added that her name Naomi did not bear the letter "Y" (as borne by the letters dated 18/03/2024). The documents referred to were brought to her attention for the first time through the directions of the court, which sought clarification about them from her. She added that the name on the document was not hers. She added that the signature on the letters was different from hers, which could be picked from the affidavit she swore on 29/07/2024. She stated further that she does not change her signature. Further, in the entire of her employment she had never been assigned a driver. Again, she had never had a Samuel as a driver. She always drove herself. She denied ever receiving any money from the 2nd Plaintiff. She had never met him.
67. She denied knowledge of hotels known as Elgon View and Meta. She acknowledged knowing the one known as Makuti. About it, she denied ever meeting anyone there or in a vehicle to transact business. She offered her phone and records to be subjected to forensic examination to confirm any calls or recordings for the truth about her testimony.



Submissions

68. The Application was finally canvassed by way of written submissions. The Applicant submitted his dated 17th April 2024. The 1st Defendant filed his dated 23/04/2024 while the 2nd Defendant filed its too.

Issue, Analysis and Determination

69. I have considered the application, the law and submissions by the parties. Given the facts as borne by the numerous affidavits of the various deponents and the oral testimony of the five persons who testified orally, the issues in the application are simple and only two: whether the application is merited, and who to bear the costs of the same.

70. Starting the determination of the first issue with the factual analysis, it is worthy of note that this Court dismissed this suit for want of prosecution hence leading to the instant application. I will summarize the relevance or otherwise of the law applicable.

71. The dismissal of the suit was due to want of cause why it was not prosecuted for all the while. The order was made under Order 17 Rule 2 of the Civil Procedure Rules. It provides at the relevant part as follows:

“(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(4) The court may dismiss the suit for non-compliance with any direction given under this Order.”

72. I have carefully read the provisions of the entire Order 17 of the Civil Procedure Rules. Order 17 Rule 2(6) provides that after the dismissal of suit under the Order a party may apply to Court. This means that one may apply for an order of costs of they were not granted or the setting aside of the suit.

73. The decision on whether or not to allow an application for setting aside an order for dismissal of a suit due for want of prosecution is within the wide discretion of the court. This discretion has to be exercised judiciously, as was stated the case of *Shah vs Mbogo* (1979) EA 116 quoted with approval in the case of *John Mukuha Mburu v Charles Mwenga Mburu* (2019) eKLR, where that court held thus:

“.....this discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designated to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the cause of justice.”

74. Also, the case of *Racheal Njango Mwangi (Suing as Personal Representative of the Estate of Mwangi Kabaiku) v Hannah Wanjiru Kiniti & another* [2021] eKLR explains it even further.

75. For the Court to exercise its discretion in favour of the Applicant, he/she/it must satisfy it that there is sufficient cause or reason to warrant the grant of the setting aside order, and subsequently reinstate the suit. Sufficient Cause was defined by the Supreme Court of India in *Parimal vs Veena* which was



cited with approval in the case of Wachira Karani v Bildad Wachira (2016) eKLR. In the case, the said Supreme Court stated that:-

“sufficient cause” is an expression which has been used in large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore the word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, “sufficient cause” means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been “not acting diligently” or “remaining inactive.” However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously”

The court in the above case added that while deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgment impugned before it. The test to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called for hearing. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application. Thus, the defendant must demonstrate that he was prevented from attending court by a sufficient cause.”

76. In the instant case the Plaintiffs raised several antithetical reasons to justify the exercise of this Court’s discretion in their favour. I need not go into the details because they were summarized above.
77. But as this Court pens off, of interest is the comic explanation given by the 2nd Plaintiff – a person who is supposed to be a man of high moral integrity in both the sight of God and man. He says that he “met” the Land Registrar(s) from the Land Office Trans Nzoia not in their offices but outside, in several hotels and even cars as he ‘processed’ the documents he relied on to give the Court sufficient cause to set aside the orders of dismissal. He not only ‘met’ the said land registrars but made calls to them on various occasions to either be given directions on the step to take or what to give effect in relation to the ‘transactions’ and to receive documents to that effect.
78. Further, it appears to me that the 2nd Plaintiff seemed to have been enjoying giving out the sums he testified he purportedly gave to the tune of Kshs. 4.4 million or he may, if it can be taken to be true that he did, or he just used the intended process of getting documents to obtain money from his two colleagues or the unsuspecting congregation. Of curiosity is that despite the detailed narration of how he paid out a lot of money with the intent of corrupting a public officer had he succeeded to deal with one, the 2nd Plaintiff provided neither the number to which he paid part of the cash nor the evidence by way of photographs or account number(s) of the person(s) he gave the money to. This makes his explanation about the transactions even more suspicious and incredible. This Court is of the humble view that his side of explanation may have been a subtle way of trying to dissuade the Court from finding that the three Plaintiffs conspired to commit from forgery and they actually did it and then swore falsely about the same in order to convince the court to set aside the dismissal of the suit for want of prosecution.



79. This court has carefully considered the application, particularly, the facts surrounding it. It is of the humble view that the facts, both those in issue and those relating to the facts in issue, are clear. The court makes a finding that the facts as given by the applicants were at best nothing but purely concocted stories and lies: stories designed to mislead the court into believing that there was sufficient reason to set aside the orders of dismissal of the suit. First, it is clear that the suit was filed by the plaintiffs and left to lie in the registry as the Plaintiffs ventured to their vain designs for a total of about three years.
80. Secondly, it has been admitted by the plaintiffs both on oath and by affidavits that the 1st and the 3rd Plaintiffs never met any of the alleged real or true Land Registrars or other officers working in the respective offices. The 2nd Plaintiff purported to meet have met them, but he admitted he met the broker, Leonard Moss (if such a person exists) and dealt through him to other persons claiming to be the respective officers. Therefore, all the facts they deposed to regarding how the letters marked IW 1 and 2 in the Affidavit sworn on 15th April 2024 and the certificates of official search marked IW 5 and 6, and the certificates of lease marked IW 3 and 4, all being annexed to the Affidavits sworn by Isaiah Wanyonyi on the said date are nothing but false documents arising from a conspiracy by all the plaintiffs, aimed at misleading the court.
81. Further, the depositions by the 1st and 3rd defendants made on 22nd July 2024 were nothing but false swearing meant to cement the concocted lies of the 2nd Plaintiff in support of the application ultimately supported when he testified in person.
82. It is surprising that the 2nd plaintiff could claim that he did not know the law on how any or documents relating to matters of land or indeed any other issue from respective government offices. Ignorance of the law is not a defence. Again, this is only a pure lie because it turns out from the concocted story that he gave that he knew well that the actions, if any, that he undertook were illegal or unlawful. This was so by him resorting to dealing with the said Leonard Moss as a broker and recording all the conversations between himself and the alleged officers from the lands and survey offices just in case they changed their minds. Why was he suspicious? Again, this is a person who is enlightened: a man of God who purports to lead the flock of Christ. In my view, he was pretty aware that whatever transactions he entered were suspicious and that is why he kept recording every conversation secretly, if he ever did. Suffice it to say that no such conversations were tendered in evidence to support that allegation.
83. Lastly, regarding the documents annexed to the Affidavit signed by the 1st Plaintiff on 15th April 2024, particularly the letters dated 18th March 2024 marked as IW 1 and 2, it is surprising that the letter purported to emanate from the Ministry of Lands, Physical Planning and Urban Settlement. It was titled, “Recovering Letter for Kitale Mun. Blk 4/441; To Whom It May Concern.” respectively. It was signed by seven (7) individuals, two of whom their names were close to those of two officers who the Land Registrar in charge of the Trans Nzoia County acknowledged to have been working in the office. Needless to say, he added that the signatures on those documents were not of the two officers. He added that he did not know the other persons or signatories of the letter and he had never met them, including the 2nd Plaintiff. Again, the 2nd Plaintiff who signed as the last person does not himself work in the Lands Office or the government. Why would he sign a letter emanating from the said officer as if he was one of the makers, and indeed it made him one? This shows how deeply fake the document was.
84. The Plaintiffs’ learned counsel put questions to the two Land Registrars during their oral testimony on their respective affidavit sworn on 22nd July 2024 as to whether they were handwriting experts over the head of the handwriting expert reports about the signatures that they stated were forged. The Land Registrar, Mr. Makini, who was the officer in charge of Trans Nzoia County, must have been familiar with the signature of his assistant, one Naomi Rop, whom he supervised. It is farfetched and neither here nor there for one to discount the officer’s evidence that he could tell the signature of his colleague,



whom he had worked with for over six months, supervising. Regarding the same allegation against this second land registrar, Naomi, it is clear to me that she denied the signature on the two (2) letters. She even invited the court to compare that signature with the one which was on the Affidavit she swore on 29th July 2024 and find out whether the signatures were not different. It does not require rocket science to be used to tell the difference between the two signatures which are markedly different from or diverse from each other. In any event, Section 107 of the *Evidence Act* provides that he who alleges proves. It is the Plaintiffs who were to prove that the signature was hers and not vice versa. Thus, the argument was that of a drowning group of people clutching to a reed to avoid drowning. I dismiss it.

85. The upshot is that the application is wholly unmeritorious. This court cannot rely on a concocted story based upon Affidavits that contain falsehoods to set aside the Order of dismissal of the suit. The application is dismissed with costs to the 1st and 2nd defendants who opposed it.
86. This Court makes a further finding that the plaintiffs committed or are suspected to have committed a number of offenses, including, false swearing, making false documents, lying on oath, perjury, presenting documents to public officers and in evidence, conspiracy to commit felonies, computer forgery and other related offences, in a bid to convince this Court others than it has arrived at. For this they ought to be punished as by law established.
87. The Court directs that all the three Plaintiffs avail themselves in person before the honourable learned judge in Kitale for further directions regarding the possible offences committed. Further, for the DCIO who was investigating related offences earlier on in the matter, to confirm how far he went with the investigations. Witness summonses are hereby issued accordingly. The matter be mentioned on 11th March 2025.
88. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 27TH DAY OF FEBRUARY, 2025

HON. DR. IUR F. NYAGAKA

JUDGE

In the presence of:

Miss Rutto Advocate for Yego Advocates for the 1st Defendant

D. Onyancha Advocate for the 2nd Defendant

Teti Advocate for Plaintiffs – absent though duly informed (see court record).

