



**Motanya & 6 others v Waithenji & another (Environment & Land Case
934 of 2012) [2024] KEELC 1784 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1784 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 934 OF 2012**

EO OBAGA, J

APRIL 11, 2024

BETWEEN

**ARISTARICHO MOTANYA 1ST PLAINTIFF
HARON ONDITI ONCHIRI 2ND PLAINTIFF
MARGARET NYANGANYI PHILIP 3RD PLAINTIFF
RONALD CHEMITEI 4TH PLAINTIFF
ISAACK MORIASI KAOSA 5TH PLAINTIFF
HANNAH MUMBI 6TH PLAINTIFF
TIMOTHY S. LUGALIA 7TH PLAINTIFF**

AND

**JOSEPH KARIUKI WAITHENJI 1ST DEFENDANT
MUNICIPAL COUNCIL OF ELDORET 2ND DEFENDANT**

RULING

1. This is a ruling in respect of a notice of motion dated 17.11.2023 in which the plaintiff/Applicants seek the following orders: -
 1. Spent
 2. Spent.
 3. That this Honourable court be pleased to review the order issued on 14.11.2023 dismissing the plaintiff's application dated 31.10.2023 for want of prosecution by Setting it aside and reinstating the said application and further permitting the Plaintiffs/applicants to prosecute their application.



4. Costs be provided for.
5. Any other and further relief that this Honourable court shall deem just and expedient to grant.
2. The Applicants had filed a Notice of motion date 31.10.2023 in which they sought a review of the court's ruling delivered on 29.9.2021. When this application came up for hearing on 14.11.2023, the Applicant's counsel was not in court. The application was dismissed for non attendance and the case was fixed for hearing on 11.4.2024.
3. In the dismissed application dated 31.10.2023, the Applicants were contending that the court did not address prayer 8 which was seeking leave to amend the plaint to reflect the new developments on the ground.
4. The Applicants' counsel contends that he was unable to attend court because he did not diarize the matter in his diary. He annexed a copy of his diary for 14.11.2023 which shows that there were only two matters which were in his diary. He therefore contended that his mistake should not be visited upon his clients.
5. The application was opposed by the 1st Defendant/Respondent based on grounds of opposition dated 25.11.2023. The 1st Respondent contends that the Applicants do not deserve the discretion of the court as they are out to delay the finalization of this suit.
6. I have considered the Applicants' application as well as the opposition to the same by the 1st Respondent. The only issue for determination is whether this court should exercise its discretion in favour of the Applicants. To begin with, this case was filed 15 years ago. It is yet to be determined. I have looked at the ruling of 29.9.2021. This ruling dismissed the Applicants' application dated 10.11.2020 in its entirety. Though there was no specific mention of the prayer for amendment, that does not mean that the prayer was not addressed by the court.
7. Even if the order of 14.11.2023 was to be set aside, the application dated 31.10.2023 will not see the light of the day. It is therefore pointless for the court to set aside the orders of 14.11.2023 only to deal with the application of 31.10.2023 which will eventually be dismissed. Indeed, even the Applicants' counsel on 1.11.2023 indicated to court that some of his clients had died. There is no effort made to substitute them. I therefore find no merit in this application. The same is dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 11TH DAY OF APRIL, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Mogambi for 1st Defendant.

Mr. Keter for 2nd Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

11TH APRIL, 2024

