



**Waweru v Kirobi (Environment & Land Case E057 of 2021)
[2025] KEELC 643 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E057 OF 2021
JA MOGENI, J
FEBRUARY 18, 2025**

BETWEEN

DOMINIC MURITU WAWERU PLAINTIFF

AND

LUCY MUMBI KIROBI DEFENDANT

RULING

1. The Ruling is in respect of the Notice of Motion Application dated 16/01/2025 by the Defendant for the following:-
 - a. Spent.
 - b. That the Honorable Court be pleased to set aside the Judgment delivered on 16th February, 2024 in this matter.
 - c. That this Honorable Court be pleased to order a stay of execution of this Judgment and/or decree made on 16th February, 2024 in this suit pending the hearing of this Application.
 - d. That the cost be in the cause.
2. The Application is premised on the grounds set out therein and is also supported by the Applicant's Affidavit of even date.
3. The Application is opposed by the Plaintiff/Respondent's Replying Affidavit sworn on 3/02/2025 by Dominic Muritu Waweru where he avers that the Applicant was initially represented by the firm of Onyango, Ndolo & Company Advocates and that after numerous adjournments occasioned by the Defendant, the said firm of Advocates filed an Application dated 11/11/2022 seeking leave to cease acting for the Defendant.



4. That the said Advocates informed the Court that the reason they sought to cease acting for the Defendant was that the Defendant had “unexpectedly declined and/or refused to give the Advocates on record further instructions in regard to the above-mentioned matter.”
5. The Plaintiff/Applicant avers that the Advocates of the Respondent in their Application to cease acting for the Respondent stated that efforts to seek further instructions from the Respondent were futile and were met with hostility from the Defendant. That the case was fixed for hearing on 11/05/2023 but the Defendant and her Advocates did not attend Court during the hearing despite the service.
6. That the Honorable Court satisfied that the Defendant’s Counsel was duly served, proceeded to hear the matter and reserved the Judgment for 16/02/2024 when the Defendant was acting in person. It is the Plaintiff/Respondent’s averment that from the date the Respondent started acting in person she did not take any action on the file and the present Application is an afterthought. According to the Respondent, the Application is guilty of laches and equity does not assist the indolent. He further avers that he has already executed the decree and evicted the Defendant from the suit property and there is nothing to stay. He terms the Application as an abuse of the process of the Court and unmerited.
7. The Plaintiff/Respondent filed their submissions dated 11/02/2025 which I have considered in writing this Judgment.
8. It is the Plaintiff/Respondent’s submissions that the Applicant is not deserving of the orders sought since it comes one year after the delivery of Judgment and after execution of the decree.

Determination

Issues for determination

9. The main issues for determination in this Application are:-
 - a. Whether the Judgment and decree and all consequential orders in this matter should be set aside and the Defendant’s case be reopened and heard on the merits; and
 - b. What Orders should issue as to costs of the Application?
10. I will proceed and address the issues as hereunder:-

Whether the Judgment and decree and all consequential orders in this matter should be set aside and the Defendant’s case be reopened and heard on the merits;

11. Now, the Judgment in this matter was delivered on 16/02/2024 and the instant Application was filed on 16/01/2025 after a period of eleven months. I do not consider that to be a short period. The Plaintiff/Respondent has submitted that the record shows that the Defendant appointed the law firm of Onyango Ndolo & Company Advocates who filed a Memorandum of Appearance on 4/08/2021. The Statement of Defence and Counter-claim dated 23/08/2021 was filed by the Defendant together with a List of Witnesses dated 23/08/2021 and a List of Documents of even date. That on 15/11/2022 the Advocates for the Defendant filed an Application dated 11/11/2022 seeking leave to cease acting but they never prosecuted it. As stated hereabove the matter was eventually fixed for hearing on 11/05/2023 when neither the Defendant nor her Advocates attended Court.
12. Now, a Court of law has a very wide discretion to set aside Judgment and the only concern of the Court in such an Application is to do justice to the parties. See Patel Vs. East African Cargo Handling Co. Ltd



1972. Consequently even where the delay has been inordinate the Court may consider the explanation for the delay.

13. In this case the reason given by the Applicant is that her Advocate never attended Court. She does not address the fact that she had even filed an Application to act in person and therefore does not explain why she did not attend Court herself even if her Advocate was not in attendance. Suits do not belong to the Counsel or the Court but to parties who should show interest by following proceedings in Court and not laying back and waiting for a miracle to happen.
14. Thus the conduct of the Defendant in this matter is all but praiseworthy. She filed an Application to act in person knowing very well she had engaged a law firm and never even appeared in Court to defend her case during the hearing. There is no good ground why she or her Advocate failed to attend Court. Further there is no good reason why she waited a whole eleven months before filing this Application. Infact at one point her own Advocates are said to have lost touch with her in the matter to the point of the Advocate wishing to withdraw from acting for her. This Court reads a lot of mischief in the Defendant's conduct throughout the proceedings.
15. Counsel for the Applicant is no less blameworthy; he never prosecuted his Application to cease acting as he had told the Court and this Court appears to have assumed rightly that he was still on the record.
16. In setting aside matters, the discretion of the Court is not intended to aid any party who has deliberately attempted to delay the hearing, yet the Applicant's conduct herein as well as lack of proper explanation for her absence from Court, can only point to her attempt to deliberately delay the finalization of this suit.
17. In the present suit, I find that the Applicant deliberately failed to defend her case by refusing to avail herself to the Court process. Indeed, it had been her primary duty to take steps to defend her case since she had been the one who had delayed the hearing of the Plaintiff's case.
18. I therefore find that the present Application is an afterthought, a waste of judicial time and an abuse of the Court process and is also intended to vex the Plaintiff/Respondent and put them to expense. The Plaintiff/Respondent is being gravely prejudiced by the Applicant and therefore there is need for the Court to balance the rights of both parties and to exercise its discretion in dispensing justice for it is not powerless to grant relief, when the ends of justice and equity so demand.
19. In the light of the foregoing, I find that the Application dated January 16, 2025 has no merit and it is hereby dismissed with costs to the Respondent.

Ordered accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

MOGENI J

JUDGE

In the presence of:

Mr. Karuga for the Plaintiff

Defendant – Absent

Ms. Lillian – Court Assistant

