



**Oboko v Nyangweso & 2 others (Environment & Land Case  
456 of 2015) [2024] KEELC 7102 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7102 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 456 OF 2015**

**M SILA, J**

**OCTOBER 30, 2024**

**BETWEEN**

**ROBERT OBWOCHA OBOKO ..... PLAINTIFF**

**AND**

**MARGARET KWAMBOKA NYANGWESO ..... 1<sup>ST</sup> DEFENDANT**

**MARGARET KWAMBOKA OKARI ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KISII ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

(Application by plaintiff to set aside proceedings conducted after his application for adjournment was declined; plaintiff absenting himself from court and his counsel applying for adjournment which was denied; record showing that the plaintiff has a history of continuously applying for adjournment; court persuaded that it exercised its discretion properly in denying the application for adjournment; nevertheless out of the grace and discretion of the court so that the plaintiff can be heard, proceedings open but subject to the plaintiff paying thrown away and punitive costs to the defendants)

1. The application before me is that dated 18 June 2024 filed by the plaintiff. In a nutshell, what the plaintiff seeks is the setting aside/review of the orders made on 10 June 2024, wherein the matter proceeded without the presence of the plaintiff, and hearing of the matter ordered closed. The plaintiff now seeks to have the case reopened so that he can be allowed to adduce evidence. The application is opposed.
2. The background is that the applicant commenced this suit through a plaint filed on 6 October 2015. In it he pleaded to be the owner of the land parcel Bassi/Bogetaorio II/4072 having purchased it in the year 2012. He sued for reason that he discovered that the 1<sup>st</sup> defendant/respondent was also claiming title to the same land and which she wished to sell to the 2<sup>nd</sup> defendant/respondent. He inter alia asked



for orders that the alleged title of the 1<sup>st</sup> respondent is fraudulent and for the Land Registrar, sued as 3<sup>rd</sup> defendant, to be ordered to rectify the register. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed defence and counterclaim. They more or less refuted any title held by the applicant to the suit property and in the counterclaim they inter alia asked for orders of cancellation of the title of the applicant.

3. The matter commenced hearing on 18 February 2018 before Mutungi J, when the applicant gave evidence in chief which he did not complete as he was stood down for cross-examination. The suit next came up for hearing on 9 October 2018, but Mr. Nyambega for the applicant applied for adjournment for reason that the applicant was not present. Adjournment was given. The next hearing date was 23 October 2019, when again an application for adjournment was made on behalf of the applicant, on the reason that the applicant was unwell. The next hearing date was 18 February 2020 when the applicant, yet again applied for adjournment on the reason that he was out of the country. The next date for hearing was 8 February 2021. There was no appearance on the part of the plaintiff or his counsel and the court adjourned out of the court's own volition. The next time the matter came up in court for hearing was 6 February 2023 but it was not clear if counsel for the applicant had been served with a hearing notice and I adjourned to 5 July 2023. On 5 July 2023 I had to adjourn to 11 December 2023 as the applicant's counsel had not served the hearing notice upon the respondents. On 11 December 2023 the applicant applied for adjournment on the basis that his advocate was unwell. I adjourned the case to 10 June 2024.
4. On 10 June 2024, counsel for the applicant applied for adjournment on the ground that his client is attending a seminar in Ethiopia where he was a keynote speaker which application was opposed by the respondents. I was not impressed by the application for adjournment, first because no evidence of such travel was presented, and secondly the date for hearing had been given 6 months back and there was ample time for the applicant to organise himself. Assuming he had travelled for a seminar, it was apparent to me that the hearing of the matter was less important compared to the applicant's other engagements. I observed that it was not the first time that the applicant was applying for adjournment on the basis that he is out of the country. In addition, I observed that this was a 2015 case that had been in court for 9 years and that the applicant had given his evidence in chief 6 years back. I found that the applicant had deliberately absented himself from court and vacated his evidence in chief as he had failed to attend to be cross-examined on it. I ordered that we proceed with the counterclaim at which point Mr. Nyambega walked out of the proceedings. I took in the evidence of the respondents and they closed their case upon which I directed the filing of submissions. It is then that this application was filed.
5. In the supporting affidavit, the applicant avers that on the hearing date, he was away in Ethiopia as a facilitator in a conference on medical informatics. He avers that he attended the seminar for personal professional growth and the wider benefit to medical services and he could not therefore be able to attend court. He believes that he has a good case that he deserves to be given a chance to ventilate.
6. The respondents opposed the application and were not of opinion that the applicant deserves any orders sought.
7. I have considered the application and the reasons given in opposing it together with the submissions of counsel.
8. I gave reasons why I was not persuaded to allow the application for adjournment. Partly, I was not persuaded that there was sufficient evidence that the applicant was in Ethiopia for a seminar. I see that in his application the applicant annexed documents to show that he was truly in Ethiopia for a seminar. That may be so, but I am not persuaded that in the circumstances of this case that seminar ought to have been given priority over the hearing of this suit. As I pointed out in my ruling declining



the application for adjournment, the case has been in court for 9 years; the applicant had testified in 2018 and has for 6 years been awaiting cross-examination. Moreover, the applicant has been absenting himself from court before citing the reason that he is out of the country. Why then was he bringing a case in court if he had no intention of pursuing it? Why is he giving priority to other things rather than proceeding to attend court to finalize his case? Is it really fair to keep other litigants waiting in court for 9 years because the applicant is more keen on his personal professional growth through attendance of seminars? It is not. I am fully persuaded that the court properly exercised its discretion to decline the application for adjournment.

9. Nevertheless, out of this court's own grace and wide mandate to do justice, and not the reasons given by the applicant, I am prepared to set aside the proceedings of 10 June 2024 if only to allow the applicant to be heard on his case. The applicant must however compensate the respondents for their attendance in court on 10 June 2024 and the attendances thereafter to attend to this application. But that is not enough; his conduct of continuously absenting himself from court also needs admonishing through payment of some punitive costs. As I have said, you cannot bring people to court then keep them waiting for an indefinite period while you pursue your own personal matters. Taking all these circumstances into consideration, I will allow the application but subject to payment of thrown away and punitive costs of Kshs. 100,000/= jointly to the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents through their counsel on record, and Kshs. 20,000/= to the 3<sup>rd</sup> respondent through the Attorney General. These costs be paid within the next 14 days otherwise the application will stand struck out. If payment is made the case may be reopened for the applicant to attend for cross-examination and he can be at liberty to call any additional witness and also cross-examine the respondents and/or their witnesses who testified on 10 June 2024. The applicant ought not to take the grace given by this court for granted and must proceed and close his case at the next hearing assuming he abides by the orders above.
10. Orders accordingly.

**DATED AND DELIVERED THIS 30 DAY OF OCTOBER 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Ms. Nyaboke h/b for Mr. Mose Nyambega for the plaintiff/applicant

Mr. Ochwangi present for the 1<sup>st</sup> & 2<sup>nd</sup> defendants/respondents

Mr. Wabwire present for the 3<sup>rd</sup> defendant

Court Assistant: David Ochieng'

