



Chacha v Attorney General & 2 others (Environment & Land Case 538 of 2017) [2024] KEELC 14222 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 14222 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 538 OF 2017
GMA ONGONDO, J
NOVEMBER 18, 2024**

BETWEEN

ESTHER ROBI CHACHA PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

REGISTERED TRUSTEE CATHOLIC DIOCESE OF KISII 2ND DEFENDANT

PAUL GINONO 3RD DEFENDANT

RULING

1. By a Notice of Motion dated 15th November 2023 under sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and Order 12 Rule 7 of the Civil Procedure Rules 2010, the applicant, Esther Robi Chacha through Abisai and Company Advocates is seeking the orders thus;
 - a. That, the orders made on the 26th October 2023 be set aside.
 - b. That, the plaintiff/Applicant be allowed leave to change advocate herein from firm of Ms. Kerario Marwa & Company Advocates to Ms. Abisai & Company Advocates.
 - c. That, the suit be reinstated and set down for hearing.
 - d. That, costs of this Application be provided for.
2. The application is premised upon the annexed affidavit of eighteen paragraphs sworn on even date by the applicant and twelve grounds which include;
 - a. This suit came up for hearing on 26th October 2023 and was dismissed for want of prosecution.
 - b. That the hearing notice for 26th October 2023 was not served upon the Plaintiff's advocate.
 - c. The Applicant wishes to proceed with her case on merit.



3. The respondents were duly made aware of the existence of the application as disclosed in the affidavit of service sworn 13th November 2023 by Aggrey Ongiri, an authorized process server. Nonetheless, they opted not to respond to the application; see also *Ogada-vs-Mollin* (2009) eKLR.
4. On 5th December 2023, the court directed that the application be heard by written submissions.
5. The plaintiff/applicant's counsel filed submissions dated 2nd January 2024 making reference to the application, the hearing of the suit which was fixed for 20th October 2023 and that the applicant's counsel was not aware of the date. So, counsel submitted that the applicant deserves the orders sought in the application. To reinforce the submissions, counsel relied on Philip Chemwolo and another-vs-Augustine Kubende (1986-88) eKLR 103 and *Wachira Karani-vs-Bildad Wachira* (2016) eKLR, among other authorities.
6. The respondents did not file submissions in respect of the application.
7. On that account, is the applicant deserving of the orders sought in the application?
8. The suit was dismissed on 26th October 2023 when the court observed;
' I note that today's hearing was taken by consent of the parties and the matter herein having been filed in court in 2012 and the plaintiff absence not explained the suit herein is dismissed for want of prosecution. Costs to the 1st defendant'
9. It must be noted that on 2nd October 2023 when the hearing of the suit was set for 26th October 2023, there was no appearance for the plaintiff. Only Mr Kiseru learned counsel for the 2nd defendant was present and he court directed that the plaintiff/applicant be served with hearing notice.
10. Clearly, there is nothing on record to show that the plaintiff was served or made aware of the existence of the hearing fixed for 26th October 2023 as noted in *Ogada* case (*supra*).
11. Order 9 Rule 9 of the Civil Procedure Rules 2010 governs change of advocate by an order of court or consent of the parties. Order 12 Rule 7 of the said Rules provides for setting aside judgment or dismissal in a suit. Indeed, the suit was dismissed and the applicant has the right to counsel herein.
12. It is established law that the right to be heard is an unlimited fundamental principle of justice; see Articles 25 (c) and 50 (1) of *the Constitution* of Kenya 2010, Philip Chemwolo case (*supra*) and *Halsbury's Laws of England* 5th Edition 2010 Volume 61 paragraph 639.
13. To that end, I find that the applicant is entitled to the hearing of the suit on merit. The application is firm and meritorious.
14. Wherefore, the application is hereby allowed in terms of prayers a, b and c as stated in paragraph 1 a, b and c hereinabove.
15. Costs of the application be in the cause
16. The suit is set for mention on 26th February 2025.
17. It is so ordered.

DATED and DELIVERED at MIGORI this 18TH day of NOVEMBER 2024

G M A ONGONDO

JUDGE

PRESENT;



Mr B. Singei learned counsel for the applicant

Ms Opiyo learned counsel for the 1st respondent

Mr Achola learned counsel for the 3rd respondent

Tom Maurice, court assistant

