



**Mwangi v Matindi & 3 others (Environment & Land Case  
436 of 2016) [2023] KEELC 625 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 625 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 436 OF 2016  
EK WABWOTO, J  
JANUARY 30, 2023**

**BETWEEN**

**PURITY NJOKI MWANGI ..... PLAINTIFF**

**AND**

**JOHN MWANGI MATINDI ..... 1<sup>ST</sup> DEFENDANT**

**ANN WANJIKU WAWERU ..... 2<sup>ND</sup> DEFENDANT**

**DAVID KAMAU MWANGI ..... 3<sup>RD</sup> DEFENDANT**

**EMBAKASI RANCHING CO LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the ruling of the court in respect to an application for an adjournment made by Counsel for the Plaintiff. The application for adjournment is premised on the grounds that Counsel for the Plaintiff is unwell to the extent that he is even addressing the court from hospital where he had gone to seek for treatment. The other ground is that the 4<sup>th</sup> Defendant (Embakasi Ranching) has not been properly served nor filed its defence and they are considered a recessing party in the matter.
2. The Application was strongly opposed by Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant. Counsel argued that the court had not been informed as to why the Plaintiff was not present and that the issue of the 4<sup>th</sup> Defendant is an afterthought.
3. I have considered the application and the reasons advanced by Counsel for the parties. This suit was filed on 28<sup>th</sup> April 2016. The matter came up for hearing several times but it never proceeded for hearing. The record shows that the Plaintiff was granted a last adjournment on February 15, 2022. The Plaintiff was not present in court on that day. The matter was later was fixed for hearing on 12/05/2022. On the said date, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were present and ready to proceed. In the absence of the Plaintiff who had been notified and was aware of the hearing date, Counsel for the 1<sup>st</sup>,



2<sup>nd</sup> and 3<sup>rd</sup> Defendants urged the court to dismiss the suit for non-attendance. The court considered the application and dismissed the suit.

4. Later on, the Plaintiff moved this court *vide* an application dated May 16, 2022 seeking to reinstate the suit on several grounds. The application was vehemently opposed by the Defendant, however the court in exercising its discretion allowed the reinstatement of the suit *vide* its ruling delivered on September 22, 2022 and granted the Plaintiff a final opportunity to prosecute her case.
5. Today the Plaintiff is equally not present and no reasons have been stated for her absence from. Her Counsel was equally silent on her whereabouts. I wish to state that cases belong to litigants and not advocates. I find that the Plaintiff is equally not keen in prosecuting her case despite the many opportunities she has been given. Courts of law are not parking bays for suits neither are they waiting lounges for irresolute litigants who are not keen in prosecuting their matters.
6. I have also considered the fact that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants are present in court and ready to proceed. However, in the absence of the Plaintiff, I find that even though sickness of Counsel for the Plaintiff was not anticipated, the Plaintiff ought to have been physically present in court, only with her physical presence, the court could have considered the request for adjournment.
7. In view of the foregoing, I decline to adjourn the matter and hereby proceed to dismiss the Plaintiff's suit for want of prosecution.
8. On the issue of costs, I will exercise some leniency and direct that each party to bear own costs of the suit.
9. The file is hereby marked as closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30 DAY OF JANUARY 2023**

**E.K. WABWOTO**

**JUDGE**

**In the presence of:**

**Mr. Njuguna for the Plaintiff.**

**Mr. Maina Kamau for Defendant.**

**Court Assistants – Caroline Nafuna and Philomena Mwangi.**

**E.K. WABWOTO**

**JUDGE**

