



**Ogosi v Gworo (Environment & Land Case 5 of 2022)
[2023] KEELC 384 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 5 OF 2022
GMA ONGONDO, J
JANUARY 30, 2023
(MIGORI ELCC NO. 489 OF 2017)**

BETWEEN

JOSEPH ONYANGO OGOSI PLAINTIFF

AND

CORNEL AKACHA GWORO DEFENDANT

RULING

1. The instant ruling relates to issuance of ruling notice regarding a Notice of motion dated March 7, 2022 duly filed in court on March 9, 2022 (Hereinafter referred to as the application). One Joseph Onyango Ogosi, the plaintiff/applicant through the firm of Sagwe and Company Advocates, is seeking, among other orders, to set aside this court's orders of dismissal of this suit made on December 17, 2018 and that the suit be reinstated for hearing on merit.
2. Notably, learned counsel for the applicant filed submissions dated October 21, 2022 concerning the application pursuant to the court's orders of March 9, 2022.
3. Besides, the court is not in a position to render a ruling in respect of the application on this date for reasons necessary for the ends of justice as stated hereunder.
4. Interestingly, neither the respondent nor his counsel is captured in the notice of October 14, 2022 at 03.12 PM GMT+3 issued by the Honourable Deputy Registrar of this court. Therefore, the respondent's counsel has not been notified of this matter inclusive of this date.
5. It is trite that the court has the duty to ensure that the respondent is made aware of the existence of the matter in question and to have the respondent served with all the relevant papers. In that regard, the respondent has the right to appear and respond to the application or decline to do so; see *Ogada-versus-Mollin* (2009) KLR 620.



6. It must be borne in mind that a fair opportunity to be heard is a fundamental principle of justice; see *Halsbury's Laws of England* 5th Edition 2010 Volume 61 paragraph 639.
7. No doubt, both parties in this application are entitled to access justice as provided for under Article 48 of the *Constitution of Kenya, 2010*. Furthermore, the parties have the unlimited right to be heard in the application under Articles 25 (c) and 50 (1) of the same *Constitution*.
8. Wherefore, ruling in respect of the application is fixed for February 28, 2023.
9. The Deputy Registrar of this Court to notify counsel for the respective parties accordingly. For clarity, notice be effected at least, via email herein and or any other fastest and convenient method.
10. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 30TH DAY OF JANUARY, 2023.

G. M. A ONG'ONDO

JUDGE

Present

1. Parties –Absent

2. Terence, Court Assistant.

