



REPUBLIC OF KENYA



**Kinnock Trading Limited v Dogo & 131 others (Environment & Land  
Case 128 of 2015) [2025] KEELC 2853 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2853 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 128 OF 2015**

**FM NJOROGE, J  
MARCH 26, 2025**

**BETWEEN**

**KINNOCK TRADING LIMITED ..... PLAINTIFF**

**AND**

**EVANS MANGI DOGO & 131 OTHERS ..... DEFENDANT**

**RULING**

1. The Defendants filed a Notice of Motion application dated 16/10/2024 imploring the court to dismiss this suit for want of prosecution. The application was brought under Sections 1A, 1B, 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the [Rules](#) thereto. In support of the application was an affidavit sworn by Moses Mramba Shaha (the 82<sup>nd</sup> Defendant) and it was based on the following grounds: -
  - i. That the Plaintiffs have inordinately failed, neglected and/or refused to set down the hearing of this suit to its logical conclusion for a period of more than a year;
  - ii. That the continued presence of this suit in court without prosecution is highly prejudicial to the Defendants;
  - iii. That in view of the time, it is in the best interest of justice that this application be granted;
  - iv. It is only just and fair that the orders sought herein be granted.
2. The Plaintiff opposed the application. It filed a notice of Preliminary Objection and replying affidavit sworn by its advocate, Mr. Willis Oluga, wherein he deposed that after the Court of Appeal reinstated this suit following its dismissal by this court, the Plaintiff instructed him and he filed a notice of change of advocates on 7/2/2022. Soon thereafter, he fixed the matter for mention on 3/10/2022 when the Defendants' counsel failed to attend court, causing a further mention date to be issued. The suit was thus to be mentioned again on 21/11/2022 before the Deputy Registrar. Again, the Defendants did not attend court despite being served with the mention notice. Resultantly, the suit was rescheduled for



a mention on 27/2/2023. On the said date, the Deputy Registrar did not sit and parties were advised to wait for communication from the court; that on 29/3/2023, his firm sent an email to the court seeking a mention date, which he was given or responded to on 17/10/2024. Counsel deposed that the lull between the time the email was written and the time the court responded thereto was occasioned by the fact that the advocate who was in charge of this specific matter left the firm without proper handing over. He stated that this mistake should not be visited upon the client. Counsel added that the Plaintiff has always been keen on prosecuting the matter and urged the court not to take the drastic step being sought by the Defendants.

3. Counsel further deposed that the Defendants also filed a counterclaim which they were under obligation to fix for hearing but have failed to do so while frustrating the Plaintiff's efforts to fix the matter for hearing by failing to attend court on the said mention dates.
4. Counsel added that the firm of Nyange Sharia is on record for the 1<sup>st</sup>, 46<sup>th</sup>, 48<sup>th</sup>, 61<sup>st</sup>, 82<sup>nd</sup> and 97<sup>th</sup> Defendants only, therefore the application purportedly filed on behalf of all defendants is irregular and fatally defective; and that the supporting affidavit was sworn by the 82<sup>nd</sup> Defendant, who was not authorized by the other Defendants to do so. These two were the points raised in the notice of Preliminary Objection.
5. On 11/2/2025, the Defendants were directed to file written submissions within 14 days and the Plaintiff within 14 days of service. I have carefully perused the court record on C.T.S. It is evident that no submissions have been filed by either party by the date of preparation of the present ruling yet the time prescribed for that action has lapsed. For this reason, I dismiss the application for failure to comply with this court's directions.
6. This suit shall be mentioned on May 12, 2024 for issuance of a hearing date. Parties shall consolidate their trial bundles and paginate and index them without adding any other new documents not earlier filed in the court record by that date.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26<sup>TH</sup> DAY OF MARCH 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

