



**Ali v Nomad Resort Limited (Environment & Land Case
E022 of 2023) [2023] KEELC 16927 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16927 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E022 OF 2023
EK WABWOTO, J
APRIL 13, 2023**

BETWEEN

SAID MOHAMED ALI PLAINTIFF

AND

NOMAD RESORT LIMITED DEFENDANT

RULING

1. Before me for determination is the Plaintiff's application dated February 27, 2023, which was accompanied by Supporting Affidavit sworn by Justus Mutunga Advocate. The Plaintiff sought the following orders:
 - i. ...Spent.
 - ii. That the Honourable Court be pleased to set aside and or vary the directions and or orders issued on February 27, 2023.
 - iii. That this Honourable Court be pleased to reinstate the application dated January 19, 2023 and the same be fixed for hearing on merit.
 - iv. That costs of this Application be in the cause.
2. Pursuant to the directions issued by this court on February 28, 2023, it was directed that the application be canvassed by way of written submissions to be filed by both parties. The Plaintiff filed written submissions dated March 2, 2023. No submissions were filed by the Defendant despite service.
3. In submissions dated March 2, 2023, the Plaintiff submitted that a technical hitch had restricted the Plaintiff's advocate from joining court in time to participate in the court's virtual/online proceedings. Relying on the cases of *Official Receiver and Liquidator v Freight Forwarders Kenya Limited* [2000] and *Richard Nchapai Leiyangu v IEBC & 2 Others* [2013] eKLR, it was submitted that this should



be considered an honest mistake that could happen to anyone and should not negatively impact his client's right to fair hearing and trial.

4. The application was not opposed despite being served upon the defendants.
5. Having perused the written submissions, court proceedings and supporting documents, it is evident that the issue for determination before this Court is whether the Application dated February 27, 2023 is merited?
6. Order 12 Rule 7 of the Civil Procedure Rules provides for setting aside, recalling and/or reinstating a suit or application dismissed for non-prosecution or non-attendance.
7. Articles 48 and 50 of the Constitution guarantees every Kenyan a right to access to justice and fair hearing. Article 159 (2) d of the Constitution requires that justice shall be administered without undue regard to technicalities whereas Sections 3, 4 and 13 of the Environment and Land Court Act as read together with Section 1A, 1B and 3A of the Civil Procedure Act expects the court to strive towards substantive justice.
8. In the cases of Gladys Njeri Kirugumi v Langata Development Co Ltd & Another [2016] eKLR and Films Rover International Ltd. v Cannon Film Sales Ltd., [1986] 3 All ER 772 the Court in determining reinstatement of an application considered the least risk of injustice. In this instance, I have considered that the application for reinstatement was immediately and in any event on the same day after dismissal for non-attendance, which is undoubtedly a timely move by the Plaintiff. The Plaintiff quickly moved this court to remedy the situation. Moreover, the application for reinstatement remains unopposed.
9. Bearing this in mind, the route of lesser risk of injustice is to allow the application and reduce any prejudice occasioned by denial of a chance to prosecute the application.
10. In view of the foregoing, the Court finds that the application dated February 27, 2023 is merited and proceeds to reinstate the Plaintiff's application dated January 19, 2023 with an order that each party to bear own costs.
11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF APRIL 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Mutunga for the Plaintiff.

N/A for the Defendant.

Court Assistant; Caroline Nafuna.

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