



**Manair Limited v Fleet Logistics Limited & 3 others (Environment & Land  
Case 34 of 2018) [2025] KEELC 1463 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1463 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 34 OF 2018**

**JG KEMEI, J  
MARCH 20, 2025**

**BETWEEN**

**MANAIR LIMITED ..... PLAINTIFF**

**AND**

**FLEET LOGISTICS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SIGMA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff moved this Court vide the Notice of Motion dated 23/1/2025 brought under the provisions of Section 19 of the Environment and Land Court, Order 9 Rule 9 and Order 12 Rule 7 of the Civil Procedure Rules. The Plaintiff substantively prays for the following orders:
  - a. That the Court be pleased to grant leave to M/S Sheikh & Company Advocates to come on record for the 1<sup>st</sup> Defendant, post-judgement as prayed in the 1<sup>st</sup> Defendant's application dated 10/12/2024.
  - b. That the Orders issued by this Court on 22/1/2025, dismissing the application dated 10/12/2024 for non-attendance, be reviewed and set aside.
  - c. That consequent to (b) above, the 1<sup>st</sup> Defendant's Notice of Motion application dated 10/12/2024 be reinstated for hearing.
  - d. That the costs of this application be provided for.
2. The application is premised on the grounds on its face, and supported by an Affidavit of Evans Ochieng, an Advocate working with the firm of Sheikh & Company, Advocates sworn on even date.



Counsel deposes that judgment having been delivered, the law firm needs leave to come on record to enable the Plaintiff seek leave to lodge a Notice of Appeal out of time and prosecute the same on its behalf.

3. Counsel avers that when the main application was slated for hearing, he inadvertently mis-diarized the matter for the next day, that is 23/1/2025 instead of 22/1/2025 hence the reason for his non-attendance on the material day. Counsel has attached a copy of his diary for 22<sup>nd</sup> and 23<sup>rd</sup> January, 2025 in support. He argues that the innocent mistake of Advocate should not be visited on the Client. He therefore seeks that the dismissal order of 22/1/2025 be reviewed and set aside and the application dated 10/12/2024 be reinstated for hearing and determination on merits. That the application has been filed promptly having been filed just a day after the dismissal of the application.

### **Plaintiff's Replying Affidavit**

4. The application is opposed by the Plaintiff through a Replying Affidavit sworn by Kaushik L. Manek, its Director sworn on 11/02/2025.
5. The Plaintiff contends that the 1<sup>st</sup> Defendant has always been represented by Advocates of choice, the last one being the firm of Wetangula, Adan & Co. Advocates. That after the delivery of Judgment on 8/2/2024, the 1<sup>st</sup> Defendant filed two applications dated 8/3/2024 and that of 12/3/2024 seeking to allow the said firm to come on record amongst other orders. However, vide the Ruling dated 26/9/2024, the Court dismissed the application and declined to grant leave to the firm of Chesikaw & Kiprop Advocates, to come on record.
6. He deposes that the 1<sup>st</sup> Defendant filed an Appeal against the said Ruling being Civil Appeal No. E531 of 2024. That the Court of Appeal dismissed the application. Not being satisfied by the Court's finding, the 1<sup>st</sup> Defendant filed an application dated 12/11/2024 in Civil Appeal No. E604 of 2024 seeking extension of time to file a Notice of Appeal against the Judgement delivered on 8/2/2024. The said application is still pending before the Appellate Court. He contends that the main application pending before this court and dated 10/12/2024 seeks similar orders making it an abuse of court and is res judicata.
7. Regarding the application dated 22/1/2025, the deponent argues the reason for non-attendance on the basis that Counsel mis-diarized the application is not a justifiable excuse. That having been granted ex parte orders and serving it upon the Plaintiff, Counsel ought to have properly diarized the matter. He asserts that the 1<sup>st</sup> Defendant's conduct amounts to forum shopping having previously filed numerous applications that were disallowed. He prays that the application be dismissed with costs.
8. Although the State Counsel stated that the 4<sup>th</sup> Defendant had filed Grounds of Opposition in response to the application, the same are not on record. They are not in the E-Filing System either.

### **Court's Directions**

9. On 13th February, 2025, parties elected to canvass the application by way of written submissions which submissions I have had the opportunity to read through and consider in the Ruling.

### **Analysis and Determination**

10. Having read and considered the instant Application, Affidavits and the annexures thereto as well as the rival submissions I find that the issues for determination are;
  - a. Whether the Court should grant leave to the firm of M/S Sheikh & Company Advocates to come on record for the 1<sup>st</sup> Defendant.



- b. Whether this court should set aside its dismissal order and reinstate the 1<sup>st</sup> Defendant's application dated 10/12/2024;
- c. Who should bear the costs of the application?

**a. Whether the Court should grant leave to the firm of M/S Sheikh & Company Advocates to come on record for the 1<sup>st</sup> Defendant.**

11. The guiding provisions of law with regards to granting of leave for an Advocate to come on record after entry of Judgment is to be found in the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010 (CPR) which provides that:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

12. The rationale of the said order and as aptly cited by my Learned Brother Justice Angote in his Ruling delivered herein on 26/9/2024, has been set out by the Court in the case of S. K. Tarwadi -vs- Veronica Muehlemann [2019] eKLR where the Court held that;

“In my view, the essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until a judgement has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away. Indeed, Order 9 does not foresee how Rule 9 can be sidestepped hence the enactment of Rule 10 as follows:”

13. From the Application filed in Court, it is evident that the firm of Wetangula, Adan & Co. Advocates were served by the firm of Sheikh & Co. Advocates. The Affidavit of Service of Evans Ochieng' deponed on 26/2/2025 confirms that service was effected on the firm of Wetangula, Adan & Co. Advocates on 18/12/2024. The former Advocates having been duly notified and in the absence of any justifiable reason advanced to enable it not grant the leave sought, leave for the said Advocates Firm to come on record is allowed.

**b. Whether this court should set aside its dismissal order and reinstate the 1<sup>st</sup> Defendant's application dated 10/12/2024;**

14. Order 12 rule 7 of the CPR provides that;

“Where under this order judgement has been entered or the suit has been dismissed, the court on an application, may set aside or vary the Judgement or order upon such terms as may be just.”

15. The orders sought by the 1<sup>st</sup> Defendant are therefore discretionary. The 1<sup>st</sup> Defendant pleads with the court to exercise its discretion in its favour. In exercising judicial discretion, the court must caution



itself as the Court of Appeal stated in the case of Murtaza Hussein Bandali t/a Shimoni Enterprises Vs P.A Willis (1991) KLR, 469 that: -

“ This being an exercise of judicial discretion, like any other judicial discretion must be based on fixed principles and not on private opinions, sentiments and sympathy or benevolence but deservedly and not arbitrarily, whimsically or capriciously.”

16. The discretion of this court is meant to ensure that no party suffers injustice or hardship as a result of amongst others, excusable mistake, inadvertence, accident or error (CMC Holdings Ltd. –vs- Nzioki (2004) eKLR, 173).

17. A party seeking reinstatement of an application or a suit dismissed for non-attendance is required to explain his absence on the date of hearing and how he will suffer prejudice if the application and/or suit is not reinstated. In the instant case, Counsel for the Applicant has taken personal responsibility for non-attendance which led to the application being dismissed. He has also explained the circumstances leading to his failure to attend court on that day. In the case of Philip Chemwolo & Another –vs- Augustine Kubende (1986) eKLR, where the Court of Appeal held that: -

“ ...Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merits. I think the broad equity approach to this matter is that unless there is fraud, or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”

18. I have considered the reasons advanced by the 1<sup>st</sup> Defendant/ Applicant’s Advocate as to the reasons why he did not attend the virtual court session on the material date. I am persuaded that the failure to attend court was not intentional. I further note that, whereas the application was dismissed on 22/1/2025, the 1<sup>st</sup> Defendant/Applicant moved to court without undue delay. The instant application was filed on 23/1/2025, just a day after the dismissal of the application.

19. The court’s finding is that the 1<sup>st</sup> Defendant’s application dated 23/1/2025 is merited. It is allowed as prayed.

20. Accordingly, the application dated 10/12/2024 is hereby reinstated and shall be set down for hearing forthwith.

21. The costs of this application shall be in the cause.

22. It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF MARCH 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. Mr Okello HB for Mr Opiyo for the Plaintiff
2. Mr Ochieng for the 1<sup>st</sup> Defendant
3. N/A for the 2<sup>nd</sup> -4<sup>th</sup> Defendants



4. CA- Ms. Yvette Njoroge

