



**Ngiria v Ouko & 2 others (Environment & Land Case  
397 of 2011) [2023] KEELC 17570 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17570 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 397 OF 2011**

**LN MBUGUA, J  
MAY 11, 2023**

**BETWEEN**

**JOSEPH KAMAU NGIRIA ..... PLAINTIFF**

**AND**

**ROSELYN DOLA OUKO ..... 1<sup>ST</sup> DEFENDANT**

**AARON TAFARI OUKO ..... 2<sup>ND</sup> DEFENDANT**

**ANDREW ATINDA OUKO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Judgement was entered in this matter on February 21, 2019 where the plaintiff's suit was dismissed. The plaintiff filed a notice of motion application dated February 5, 2020 seeking orders to review the said judgement which application was dismissed by this court on September 28, 2022 for none compliance with court orders.
2. Subsequently, the plaintiff has now filed the instant application dated November 14, 2022 seeking orders to set aside the aforementioned order of September 28, 2022. The application is based on grounds on its face and on the plaintiff's supporting affidavit sworn on November 14, 2022. He is blaming his previous advocates for failing to comply with court orders on the filing of a further affidavit with submissions by August 4, 2022.
3. The respondents have opposed the application *vide* the replying affidavit sworn on March 17, 2023 by the 2<sup>nd</sup> respondent. He avers that the plaintiff has failed to state any sufficient reasons upon which the court should set aside its orders and instead makes feeble attempts to lay blame on his advocate.



4. I have duly considered the application, the response and the submissions of the parties. The court has discretion to set aside an order for dismissal. In *Thatbini Development Company Limited v Mombasa Water & Sewerage Company & another* [2022] eKLR, the court stated thus;

“The discretion of court to set aside an order for dismissal ought to be exercised judiciously. A suit dismissed for a want of prosecution, means that the parties therein failed to aid court in meeting its overriding objective. The party seeking to reverse this order must explain sufficiently to court as to why his application is merited and persuade court to exercise its discretion”.

5. The plaintiff’s affidavit in support of the instant application explains the circumstances under which his application was dismissed. He ascribes his predicament to his counsel who failed to comply with this court orders made on June 23, 2022 which had directed the plaintiff to file and serve his responses and submissions on or before August 4, 2022.
6. The court is mindful of the requirement of substantial justice under article 159 of the *Constitution* and would not want to visit the mistake of counsel on the plaintiff. The application is allowed, but the applicant is condemned to pay throw away costs to the respondents to the tune of Kshs 20 000 within 30 days otherwise the orders given here in shall lapse and the file shall stand as closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

E. Gaturu for the Plaintiff/ Applicant

Lukoye for Defendant/Respondent

Court assistant: Eddel

