



REPUBLIC OF KENYA



KENYA LAW
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**Njoroge v Ndichu & 27 others (Environment & Land Case
190 of 2017) [2023] KEELC 19254 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19254 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 190 OF 2017**

JG KEMEI, J

JULY 28, 2023

BETWEEN

REGINA NJERI NJOROGE PLAINTIFF

AND

LILIAN WANGUI NDICHU 1ST DEFENDANT

GRACE WANGUI NGUNJIRI 2ND DEFENDANT

ESTHER WACEKE KIBARI 3RD DEFENDANT

ANN NDATA NJOROGE 4TH DEFENDANT

CHARITY WAMBUI MUNUHE 5TH DEFENDANT

MONICA WANJIKU KARIGU 6TH DEFENDANT

ELIZABETH WANJIRU KABERI 7TH DEFENDANT

MARGARET WANJIRU MWAURA 8TH DEFENDANT

ESTHER WANGARI WACHIRA 9TH DEFENDANT

MARY WANJIRU MWANGI 10TH DEFENDANT

ISABELLA WAIRIMU KAMAU 11TH DEFENDANT

MONICAH WAGATHE KARINGA 12TH DEFENDANT

JOSEPH WAWERU WAHU 13TH DEFENDANT

SIMON KARANJA WANJIKU 14TH DEFENDANT

DANIEL KARIUKI WAIRIMU 15TH DEFENDANT

STEPHEN KANYIRI 16TH DEFENDANT

NICHOLAS MUIRURI 17TH DEFENDANT



MARGARET NYAMBURA	18 TH DEFENDANT
MIRIAM WAMBUI NDUNGU	19 TH DEFENDANT
COSMOS MUSYOKI MUTHAMA	20 TH DEFENDANT
LUCY MWIHAKI WAMBUI	21 ST DEFENDANT
ISAAC KAMAU WAWERU	22 ND DEFENDANT
EDWIN KAMAU NDICHU	23 RD DEFENDANT
JAMES WAHOME MWANGI	24 TH DEFENDANT
VERONICA WANJIRU KARIUKI	25 TH DEFENDANT
SAMSON KIMOTHO KARIUKI	26 TH DEFENDANT
NICHOLAS MURIITHI	27 TH DEFENDANT
VINCENT MUTISO MUTHAMA	28 TH DEFENDANT

RULING

1. On April 25, 2023 when the suit came up for hearing it was dismissed for want of prosecution / non-attendance of the parties. Following the said dismissal the Plaintiff/Applicant moved the Court by way of Notice of Motion dated the April 26, 2023 seeking the following orders:-
 - a. Spent
 - b. That this Honourable Court be pleased to set aside and/or vary its orders issued on April 25, 2023.
 - c. That this Honourable Court be pleased to reinstate the suit herein which was dismissed on the April 25, 2023 for none attendance.
 - d. That the costs of this application be in the cause.
2. The application is based on the grounds set out as follows:-
 - a. That the suit herein was dismissed on April 25, 2023 when neither the Plaintiff nor her Advocate were in Court virtually.
 - b. That the Advocate for the Plaintiff logged in through the Court's link but he had challenges with network connection and though on the platform could not address the Court.
 - c. That that may be occasioned by the fact that the Counsel's laptop was experiencing technical issues at the beginning of the cause list.
 - d. That efforts were made by the Counsel to address Court for enquiries at the tail end of the cause list but the session ended abruptly before he could do so.
 - e. That failure to address Court was unforeseen as it occurred due to a network hitch on the part of the Applicant's Counsel's laptop when power failed.
 - f. That it is in the interests of justice that this application is allowed.



3. The application is supported by the Affidavit of Antony Karanja Kang'iri, Advocate in conduct of the matter on behalf of the Plaintiff. He deponed that on the material date of the hearing he logged into the virtual Court at 8.50am and at around 8.59am electric power was interrupted in the building where his offices are situate and got disconnected from the virtual Court. That he was ready for the hearing and had served the parties and filed Affidavit of Service to that effect. That the failure to attend Court was not intentional but for the technical hitches brought about by power failure in his office, an act that was beyond his control. That the Plaintiff was at the Court's precincts waiting for time allocation for the hearing of the case. That the Plaintiff is ready to pay costs if the Court deems fit though the failure to attend online Court was beyond human control. The Court was urged to grant the application to allow the parties to be heard on merits.
4. Though the Respondent did not file any Replying Affidavit, he nevertheless opposed the application on the grounds that it is not the first time the suit is being dismissed for want of prosecution having been dismissed before in 2019. That the reason advanced by the Applicant do not warrant reinstatement. In the event the application is reinstated, the Respondent urged the Court to grant him costs of Kshs 50,000/-. That the Plaintiff is not interested in the prosecution the suit, given her past conduct in the sluggish manner she has handled the suit.
5. In reply the Applicant reiterated his earlier submissions and urged the Court to excise leniency in favour of the Applicant. He urged the Court that the throw away costs of Kshs 50,000/- was not only excessive but oppressive.
6. The key issue is whether the application has merit.
7. I have perused the record and it is correct that this suit was dismissed on the May 26, 2019 for want of prosecution. The question that is pestering me is whether the Applicant Plaintiff is deserving of the discretion of the Court given that this was the second time the suit was dismissed for want of prosecution and non-attendance.
8. Being aware of my duty to do justice to the parties and also to prevent the processes of the Court from abuse and or ridicule by indolent parties who file cases and neglect to prosecute them at such costs and other perils to the opponents who are kept in Court for years on end, I shall now consider the application.
9. In this case the Plaintiff counsel has led unchallenged evidence that he suffered power blackout in his office and was unable to address the Court. I have not found any evidence to suggest that the Plaintiff's conduct is intended to obstruct the cause of justice. On prejudice likely to be suffered by the Respondents I find that the Respondents too was absent when the matter was called out for hearing. I find that the Respondents will not suffer prejudice more than can be compensated with costs.
10. Having said that I am constrained to allow the application purely in the interest of justice on terms;
 - a. The application is allowed subject to the Applicant setting down the matter for hearing within the next 15 days of the date hereof in default the suit shall stand dismissed with no further orders of the Court.
 - b. The Plaintiff shall pay throw away costs in the sum of Kshs 20,000/- in favour of the Respondents.
11. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28TH DAY OF JULY, 2023
VIA MICROSOFT TEAMS.**



J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Mugo HB Karanja Kangiri for Plaintiff

2nd – 7th, 9th – 17th, 19th – 20th – Absent but was represented

1st, 8th 18th Defendants – Absent but served.

Court Assistants – Phylis & Lilian

