



REPUBLIC OF KENYA



**Kipkorir & another (Suing for and on behalf of G3 Self-Help Group) v Tanui & 5 others
(Land Case E047 of 2022) [2023] KEELC 21044 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21044 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE E047 OF 2022
FM NJOROGE, J
OCTOBER 26, 2023**

BETWEEN

**KANGOR YATICH KIPKORIR 1ST PLAINTIFF
LENGONG KIPYATOR 2ND PLAINTIFF
SUING FOR AND ON BEHALF OF G3 SELF-HELP GROUP**

AND

**WALTER TANUI 1ST DEFENDANT
WESLEY KIPTANUI 2ND DEFENDANT
TOM KIPTANUI 3RD DEFENDANT
KENNETH KIPTANUI 4TH DEFENDANT
KEVIN KIPTANUI 5TH DEFENDANT
EDWARD CHERUTICH KIPTANUI 6TH DEFENDANT**

RULING

1. This is a ruling on an application dated 29/5/2023 filed by the plaintiffs on 31/5/2023 under article 50(1) and 159(2) (d) and (e) of the *constitution*, sections 1A and 1B and 3A of the *CPA* order 12 rule 7 and order 51 of the *CPR*. It seeks orders that the setting aside the dismissal of the plaintiff's suit on the basis of the grounds set out at the foot thereof and in the supporting affidavit of the applicant's counsel which is attached thereto. The grounds are in brief that counsel for the applicant suffered world wide web network connection challenges and his call dropped as he travelled to Nakuru from the Molo direction, and as a result he was unable to log into the virtual court until later when he found that the court had already resumed but in open court for hearings and whereupon his enquiry he was informed that the present suit had been dismissed for non- attendance. He avers that the failure to attend court



was unintentional and that it would be in the interests of justice to have the application for setting aside allowed. He believes that the defendants would not be prejudiced by such an order.

2. The respondents filed their response through the sworn affidavit of one Walter Tanui dated 7/6/2023 wherein he depones that the court was kind enough to set the file aside as they waited for counsel for the plaintiff and that the file was called again shortly after 9.00 am when there was no representation for the plaintiff in court still and the matter was thus dismissed; that the practice of the court is that matters are mentioned online at 8: 30 am and parties are required to be ready at any time for the hearing. They aver that the applicant has failed to come to court with clean hands and apply that the applicant's application be dismissed with costs to them.
3. The application was disposed of by way of written submissions at the order of the court and the defendants filed their submissions on 19/6/2023 while the plaintiff filed submissions on 13/6/2023. I have taken consideration of the contents of those submissions in preparing the present ruling.
4. The basis of the application is that counsel faced challenges in logging into the virtual court. there is no sufficient rebuttal from the respondents regarding that allegation. This court notes it in writing in the record when a counsel's call drops. The proceedings of 29/5/2023 do not show that Mr Matoke's call dropped. He was recorded as absent whereupon Ms Wangari promptly applied that the suit be dismissed under order 12 rule (3) (1) and the court dismissed the suit with costs. It appears that the application at hand was promptly filed on 31/5/2023 which is commendable for counsel and his client. I also note that if Mr Matoke's call dropped before the case was called out by the court assistant the court may not have been aware of the fact that he had logged in. in any event as that fact is not seriously disputed by the respondents and this court is aware that the dropping of calls during proceedings unfortunately does occur at times it is prepared to grant Mr Matoke and the plaintiff a margin and reinstate the suit. I therefore allow the application dated 29/5/2023 in terms of prayers nos (2), (3) and (5). The file record shall be forthwith transmitted by the Deputy Registrar to Nakuru for transmission to the resident Judge for directions as to hearing of the main suit.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26TH DAY OF OCTOBER, 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

