



Kamau v National Social Security Fund (Environment & Land Case 483 of 2017) [2025] KEELC 1192 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1192 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 483 OF 2017**

**CG MBOGO, J
MARCH 13, 2025**

BETWEEN

MARGARET MWIKALI KAMAU PLAINTIFF

AND

NATIONAL SOCIAL SECURITY FUND DEFENDANT

RULING

1. Before this court for determination is the chamber summons dated 30th August, 2024, filed by the plaintiff/applicant, and it is expressed to be brought under Rule 3 (1) and (2) of the [High Court Practice and Procedure Rules](#), Order 40, Order 10 Rule 9 and Order 12 Rule 7 of the [Civil Procedure Rules](#), and Section 3A of the [Civil Procedure Act](#) seeking the following orders: -
 1. This honourable court be pleased to set aside the orders granted herein on 25th October, 2021 dismissing the plaintiff's plaint dated 20th July, 2017 for want of prosecution.
 2. Subsequent to prayer 1 above, the plaintiff's plaint dated 20th July, 2017, be reinstated and the same be listed for hearing in the normal manner or on such date as may be ordered by the court.
 3. That pending the hearing and determination of this application, that a temporary injunction be hereby issued against the defendant and/ or their agents, employees, servants and/ or anyone claiming through them from demolishing the perimeter wall and/ or interfering, selling disposing and/or alienating the parcel of land described as plot number Tassia LR 21190/C/219.
 4. That pending the hearing and determination of the suit an order of temporary injunction be hereby issued against the defendant and/or their agents, employees, servants and/or anyone claiming through them from demolishing the perimeter wall and or interfering, selling, disposing and/or alienating the parcel of land described as plot number Tassia LR 21190/C/219.



5. The costs hereof to be costs in the cause.
2. The application is premised on the grounds inter alia that the plaintiff/ applicant has recently learned that her plaint was dismissed for want of prosecution. The application was supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that she is the owner of the land known as Tassia LR 21190/C/219, having purchased the same from the defendant/respondent. She deposed that the matter was filed on 20th July, 2017 by the firm of James Nyakundi & Co. Advocates and that the said Advocate was practicing as a sole proprietor.
3. The plaintiff/applicant deposed that the counsel passed on in the month of August, 2020, and that the advocates who were left to handle his law firm did not have the knowledge that the suit had been set down for hearing. She went on to depose that she would enquire of the status and she would be informed that her file was missing from the registry. The plaintiff/applicant further deposed that her matter was listed for hearing without her knowledge, and that her non-attendance was not intentional as she was never aware of the same. She deposed that on 28th August, 2024 she was served with the court order by one Abdi who threatened to demolish her perimeter wall purporting to have purchased the suit property from the defendant/respondent. She contended that the suit ought to be reinstated to enable prosecution of the same to its conclusion, and that the defendant/respondent will not suffer prejudice if the said orders are granted.
4. The application was canvassed by way of written submissions. The plaintiff/applicant filed her written submissions dated 28th November, 2024, and raised two issues for determination: -
 1. Whether the plaintiff's plaint dated 20th July, 2017 should be reinstated.
 2. Whether the plaintiff is entitled to the reliefs sought.
5. On the first issue, the plaintiff/applicant submitted that the counsel who was on record passed on during the covid pandemic, and that at the time, he was practicing as a sole proprietor, and hence the non-attendance. The plaintiff/applicant submitted that Order 12 Rule 7 of the Civil Procedure Rules allows for reinstatement where there was non-attendance of the plaintiff/applicant as it in this case. To buttress on this submission, the plaintiff/applicant relied on the case of *John Nabashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] KEHC 6789 (KLR). The plaintiff/applicant further submitted that she has demonstrated that she made calls to the advocates who were left to handle the matter, and that the application has been brought without delay. Reliance was placed in the cases of *HAM v SOS* [2021] eKLR, *Ivita v Kyumbu* [1975] eKLR, and *Bilba Ngonyo Isaac v Kembu Farm Ltd & another* [2018] eKLR.
6. On the second issue, the plaintiff/applicant submitted that one Abdi who served the court order has threatened to demolish the perimeter wall. She further submitted that she has rights over the suit property and that it is only fair that the same is preserved pending the outcome of the suit. To buttress on this submission, the plaintiff/ applicant relied on the cases of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, *Ndeffo Co. Limited v Ndegwa & 4 others* (Civil Suit E024 of 2023) [2024] KEHC 4436 (KLR), and *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR.
7. The defendant/respondent did not file its response to the application as well as the written submissions. Be that as it may, I have considered the application, and the written submissions filed by the plaintiff/applicant. In my view, the issue for determination is whether the application has merit.



8. Order 12 Rule 7 of the *Civil Procedure Rules* provides:

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

9. The Court of Appeal in *Njue Njagi versus Ephantus Njiru & Another* [2016] eKLR stated that dismissal of a suit for none attendance by the plaintiff or for want of prosecution amounts to a judgment in that suit.

10. This court has discretion to set aside judgment or order to avoid injustice or hardship resulting from an accident inadvertence or excusable mistake, as it was held in the case of *Shah versus Mbogo & Another* [1967] EA 116.

11. It is not in dispute that this suit was dismissed for want of prosecution on 25th October, 2021. The plaintiff/applicant contended that the counsel who was previously on record practiced as a sole proprietorship, and that he passed on during the covid pandemic. She annexed a copy of the death certificate in support thereof. She further contended that the advocates left to handle the firm were not aware that the matter had been set down for hearing and on enquiry, she was informed that her file was missing from the registry.

12. The decision of whether or not to reinstate a suit is discretionary, numerous decisions have stated that the courts should bear in mind the need to do justice to a litigant as opposed to removing him/her from the seat of justice. Even as I bear this in mind, the court can only exercise such discretion where it has been found to be in favour of the litigant who has sufficiently demonstrated so. In this case, the suit was filed in July, 2017, and it was dismissed in October, 2021. I have difficulty in believing the averments raised by the plaintiff/applicant. She does not disclose who the ‘advocates’ left to handle the firm were, and there is no evidence of any visit or even the phone calls said to have been made.

13. The Court of Appeal in *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR, stated as follows: -

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

14. While I place reliance on the above authority, it is my finding that the plaintiff/applicant woke up from slumber when she was served with the order. There is no evidence adduced of any steps that were made to see to it that she was keen on prosecuting the case. As a result, I am not persuaded by the reasons advanced by the plaintiff/applicant to reinstate the suit. Having said that, there would be no need for the court to deal with the order of injunction sought as that would be a waste of precious judicial time.

15. Arising from the above, the chamber summons dated August 30, 2024, is hereby dismissed with no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY ON THIS 13TH DAY OF MARCH, 2025.

HON. MBOGO C.G.

JUDGE

13/03/2025



In the presence of:

Mr. B. Agunga – court assistant

Ms. Munyua for the Plaintiff/Applicant

Mr. Macharia for the Defendant/Respondent

