



**Komen v Kigen alias Chepunyuk (Environment & Land Case  
9 of 2023) [2023] KEELC 21267 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21267 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT & LAND CASE 9 OF 2023  
L WAITHAKA, J  
OCTOBER 23, 2023**

**BETWEEN**

**WILLIAM KOMEN ..... APPLICANT**

**AND**

**DAVID KIGEN ALIAS CHEPUNYUK ..... DEFENDANT**

**RULING**

1. The application dated 13<sup>th</sup> July 2023, filed by Kemboi & Company Advocates is brought under Article 159 of *the Constitution* of Kenya, Section 1A, 1B, 3A and 7 of the *Civil Procedure Act* and order 12 rule 7 of the *Civil Procedure Rules*, seeking the following orders:
  1. Spent.
  2. That this suit be and is hereby reinstated, and the Deputy Registrar is hereby ordered to give it a date on priority basis.
  3. That this Honourable Court be pleased to issue any further orders geared at upholding substantive justice.
  4. That costs of this application be provided for.
2. The application is premised on the grounds on its face and is supported by the affidavit of Kipkemboi Levi Sirma, sworn on 13th July, 2023. He deposes that on the date the suit was dismissed for non-attendance, he experienced a power outage in his office and his attempts to log in using his mobile phone were not successful because his bundles had depleted; that by the time he loaded his phone with airtime, the matter had been dismissed; that failure to log in on time was not deliberate; that the application has been filed in good time and be allowed.
3. The application is not opposed.



4. A review of the court record shows that on 24<sup>th</sup> May 2017, Odeny J, granted the plaintiff leave of 14 days to amend his plaint failure to which the suit would stand dismissed.
5. The plaintiff filed an amended plaint on 16<sup>th</sup> June 2017 after time granted to file the amended plaint had lapsed. No leave was sought to extend the time within which to file the amended plaint and neither was an application to reinstate the suit filed. As at the time of filing the instant application, there was no active suit before this court.
6. For the above reason, I find the application bad in law, an abuse of the court process and a waste of court's time. Consequently, I dismiss the application with no orders on costs as it was not defended.
7. Orders accordingly.

**DATED, SIGNED AND DELIVERED, AT KABARNET THIS 23<sup>RD</sup> DAY OF OCTOBER, 2023**

**L. N. WAITHAKA**

**JUDGE**

