



REPUBLIC OF KENYA



**Mburu v Evans & 8 others (Environment & Land Case 154 of 2018)
[2023] KEELC 22117 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22117 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 154 OF 2018
LA OMOLLO, J
DECEMBER 7, 2023**

BETWEEN

MERCY WANJIRU MBURU PLAINTIFF

AND

ELIZABETH WANJIRA EVANS 1ST DEFENDANT

CHRISTINE WANGARE 2ND DEFENDANT

**MARY WANJIKU (BEING SUED AS THE LEGAL ADMINISTRATOR OF THE
LATE RAHAB W EVANS) 3RD DEFENDANT**

ELIZABETH WAMBUI 4TH DEFENDANT

MARY NYAMBURA 5TH DEFENDANT

SALOME NJOKI 6TH DEFENDANT

MARGARET WANJIRU 7TH DEFENDANT

MENENGAI OIL REFINERIES 8TH DEFENDANT

DELIVERANCE CHURCH 9TH DEFENDANT

RULING

Introduction

1. This ruling is in respect to the Applicants Notice of Motion application dated 3rd March, 2023. The said application is expressed to be brought under Section 1A, 1B, 3A of the *Civil Procedure Act*, Order 12 Rule 7, Order 17 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Applicant seeks the following orders:



- a. Spent
 - b. That this Honourable Court be pleased to review and or set aside the orders made on the 2nd March, 2023, striking out the Applicants application with costs to the Respondent, together with all consequential orders arising there from.
 - c. That this Honourable Court be pleased to reinstate the Applicant's application dated 9th February, 2023 which was dismissed for non-attendance and the same be settled.
3. The application is based on the grounds on its face and supported by the affidavit sworn by Peter Chege on 3rd March, 023.

Factual Background.

4. On 25th May, 2023, directions were issued that this application shall be heard by way of written submission.
5. On 12th July, 2023 parties confirmed having filed their submissions and the application was reserved for ruling.

Applicant's Contention.

6. The deponent, Peter Chege, deposes that he is an advocate of the High Court of Kenya and has the conduct of this matter on behalf of the Applicant herein and thus conversant with all issues arising.
7. It is his deposition that he knows from his personal knowledge that the application dated 9th February, 2023 was scheduled for inter-partes hearing on 2nd March, 2023.
8. It is his deposition that on the said date, counsel holding brief logged in before Honourable Justice Ombwayo who had previously issued directions in respect of the application only to learn that the matter was placed before another court, which then prompted counsel to log in before the Learned Judge.
9. He deposes that he knows from his personal knowledge that on the material day, counsel holding his brief was informed that the matter was unilaterally dismissed for non-attendance of the advocate for the Applicant.
10. He contends that failure to attend court on the material day for hearing was not deliberate omission by the Advocate. He contends that he knows from his personal knowledge that the non-attendance by the advocate was an inadvertent mistake and was not in any way by design and should not be taken out on the Applicant.
11. He deposes that he knows from his personal knowledge that the Applicant is desirous of prosecuting the matter and has a reasonable cause of action. It is also his deposition that he knows from his personal knowledge that there is sufficient reason to justify making of the present application as the reinstatement seeks to facilitate the ends of justice.
12. He deposes that it is in the wider interest of justice that the errors and/or acts of omission occasioned by the Advocate should not be adversely visited upon the Applicant's herein.
13. He contends that the court failed to weigh the prejudice that is likely to be suffered by the Applicant and weigh it against the prejudice to be suffered by the Respondents' in dismissing the application for non-attendance.



14. It is his deposition that it is just and expedient to have the Orders given on the 2nd March, 2023 dismissing the Application reviewed and/or set aside. He deposes that the Honourable court be pleased to reinstate the application dated 9th February, 2023 to protect the Applicant as well as preserve the ends of justice.
15. He deposes that unless the application is allowed, the Applicant stands to suffer irreparable harm as the Applicant will be condemned unheard.
16. He deposes that the application is made in good faith and he knows from his own personal knowledge that it is in the wider interest of justice that the application is allowed.

4th, 5th, 6th AND 7th Defendants'/respondents' Response.

17. In response to the application, the 4th, 5th, 6th and 7th Defendants'/Respondents' filed Grounds of Opposition on 22nd May, 2023.
18. They state that the Applicant's counsel has not named the counsel who was holding brief and therefore that is an averment that this court cannot verify and he is not the one who attended court.
19. They state that the Applicant's counsel has not owned up to the mistake in his supporting affidavit and blames an abstract counsel who the court is not aware of.
20. They also state that the onus of proof lay on the claimant to show that the facts as deposed and since there is no affidavit from the Advocate who failed to attend court on the said date, the same should fail.
21. They further state that the reasons for non-attendance are not plausible for lack of electronic evidence to show an attempt to
log into the court online portal and/or call counsel for the Respondent to explain the difficulties or at the very least reach out the court registry personnel for help.
22. The 4th, 5th, 6th and 7th Defendants'/Respondents' state that the application has no plausible or reasonable grounds as the same amounts to employing delaying tactics so as to ensure the suit does not end.
23. It is their deposition that if the application is allowed, it will open a Pandora's Box where any party desirous of rolling back the wheels of justice would just allege that they attended the wrong court without actual evidence of the court logins.
24. They also state that the Applicant will not suffer prejudice if the application is dismissed as she has illustrated a consistent pattern of adjourning the matter making sure litigation is a never-ending process and, in any case, the suit had already been dismissed for non-attendance of the Plaintiff.
25. It is their deposition that the lack of interest is conspicuous because the counsel of the Applicant failed to attend court for hearing of an application to reinstate the suit which was dismissed for non-attendance and the application was dismissed for non-attendance too.
26. They further depose that the application herein is meant to further vex the Respondents and put them in a never-ending cycle of litigation. They state that the Applicant is the Plaintiff and therefore she is duty bound to ensure the matter comes to an end in the shortest time possible but she has adamantly failed in her obligation.



27. It is also their deposition that filing endless applications only serves to keep the Defendants in constant fear of litigation and this Honourable Court's eye for justice should see through the tricks used by the Applicants.
28. They state that the application is a contravention of the Respondent's rights under Article 50 to a fair trial. They state that justice cuts both ways and the Respondent should also have a right to speedy resolution of the dispute pending before the court and there should be an end to litigation.
29. It is their statement that the suit is not meritorious and ought not be reinstated as the Respondent is prejudiced by the continued pendency of the suit which the claimant had refused to prosecute since she filed it.

8th Respondent's Response.

30. In response to the application, the 8th Defendant/Respondent filed grounds of opposition on 21st March, 2023.
31. The 8th Defendant/Respondent describes the application as bad in law, mischievous, frivolous, vexatious and totally incompetent and should be struck out.
32. It states that the said application offends the provisions of Order 12 Rule 3 and 6 of the Civil Procedure Rules, 2010.
33. The 8th Defendant/Respondent further states that it's counsel appeared at the hearing of the Application dated 9th February, 2023 wherein in the absence of the Applicant's Advocate in the matter, the application was dismissed pursuant to provisions of Order 12 Rule 3.
34. It states that the Plaintiff has been an orchestrator of her own lethargy having had so many Advocates on record and the issue of whom she gave instructions cannot fall on the Defendants'.
35. The 8th Defendant/Respondent states that it is also certain that the Plaintiff and her many counsels have always known which court the matter was to be heard, but on the material day both were conspicuously absent despite knowledge of the hearing.
36. It states that the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/or negligence of the Plaintiff and that negligence, indifference and/or laxity should not and cannot be placed at the doorstep of the Defendants.
37. The 8th Defendant/Respondent states that allowing this application would be prejudicial to the Defendants herein who for no fault of their own were ready to proceed with the hearing of the suit.
38. The 8th Defendant/ Respondent states that the application is an abuse of court process and should therefore be dismissed with costs to the Defendants.

Issues For Determination.

39. The Plaintiff/Applicant filed submissions on 30th May, 2023. She relies on Section 13 of the [*Environment and Land Court Act*](#) to submit that it grants this Honourable court the jurisdiction to deal with all disputes including the application before this court.
40. The Plaintiff/Applicant relies on Order 12 Rule 7 of the Civil Procedure Rules. She submits that the principles which guide a court in an application for setting aside an ex-parte judgment or dismissal order have been considered in previously decided judicial decisions such as *Patel v E.A Cargo Handling*



Services Ltd [1974] E.A 75, Shah v Mbogo & Another [1967] EA 116 and Florence Nyaguthii Muchemi v Attorney General & another [2018] eKLR.

41. The Plaintiff/Applicant submits that on the first principle of whether there are sufficient reasons for counsel not attending court, the Advocate for the Applicant contends that they logged in to the wrong court.
42. She submits that it is not in contention that the firm of Munene Chege & Co Advocates came on record on 25th January, 2023. She submits that subsequently, they filed an application dated 9th February, 2023 which was placed before the duty court on 13th February, 2023, and directions were given by Hon. Justice Ombwayo who further directed that the matter be mentioned on 2nd March, 2023 for further directions.
43. The Plaintiff/Applicant submits that on 2nd March, 2023 the Advocate holding brief logged into ELC No.1, only for counsel to be advised that the matter was before this Honourable Court. The Plaintiff/Applicant submits that by the time counsel logged in, the pending application dated 9th February, 2023 had been dealt with and the same dismissed. She submits that the court's record clearly shows the movement of the file.
44. It is the Plaintiff's/Applicant's submission that the error to log into the wrong court is not by the Plaintiff herein but rather by her advocates who were misguided and logged into the wrong court. The Plaintiff/Applicant relies on the judicial decision of Murai vs Wainaina (No.4) 1982 KLR 38 and Remco Ltd Vs Mistry Jadua Parbat & Co Ltd & Others, Nairobi Milimani HCC No 171 of 2001 (1EA 233).
45. The Plaintiff/Applicant further submits that the explanation given by the Advocate on record for the Plaintiff herein is reasonable and excusable and she urges this Honourable court not to visit the mistake of the advocate on the Plaintiff and allow the application.
46. The Plaintiff/Applicant submits that the second issue for consideration is whether there was any delay in filing this application. She submits that the orders, the subject matter of this current application were made on 2nd March, 2023 and the application dated 3rd March, 2023 was filed on 6th March, 2023. She submits that this was 3 days after the orders were given and two of those days being the 4th and 5th March 2023 fell on a weekend. She submits that there was no delay in presenting the current application.
47. The Plaintiff/Applicant submits that the third issue for consideration is whether there will be any prejudice. She submits that the Plaintiff herein in the main suit claims beneficial interests on the suit properties. She submits that the main suit was dismissed and an application dated 9th February, 2023 was filed to ventilate the dismissal. She submits that the said application then suffered the same fate due to the reason adduced in the current application. She submits that the Plaintiff herein has valid rights for determination by this Honourable Court.
48. The Plaintiff/Applicant relies on Article 50 (1) of *the Constitution* of Kenya and submits that all the parties herein claim various interests to the suit land and the only way the said interests can be ascertained is if the parties herein are given a chance to litigate their disputes before this Honourable Court. She submits that the Respondents herein do not stand to suffer prejudice as they will also have their day in court if the application is allowed.
49. The Plaintiff/Applicant submits that she stands to suffer prejudice if the application is not allowed.
50. The 4th, 5th, 6th and 7th Defendants filed their submissions on 26th June, 2023. They identify the following issues for determination:



- a. Whether the Honourable Court should set aside the orders dismissing the Plaintiff's application dated 9th February, 2023
 - b. Who should bear the costs of this application?
51. They submit that the application dated 3rd March, 2023 was grounded on blame to an Advocate who made attempts to log into court but with challenges and when he/she succeeded to log in court on the said date, found that the matter had already been dismissed for non-attendance.
 52. They submit that the applicant's counsel has not named the counsel who was holding brief and therefore that is an averment that this court cannot verify. They rely on the judicial decision of *Magnolia Pvt Limited vs Synermed Pharmaceuticals (K) Ltd* [2018] eKLR.
 53. It is also their submission that the evidence found in the supporting affidavit is purely hearsay where the counsel on record on behalf of the Plaintiff states that another counsel holding brief informed him of certain facts. They submit that counsel could have brought the Advocate to adduce the averments because it would be far-fetched to think that the counsel who missed to attend court on time cannot be found. They submit that the supporting affidavit should be struck out for non-compliance with the rules of procedure and reliance is placed on Order 19 Rule 3 of the Civil Procedure Rules.
 54. The 4th, 5th, 6th and 7th Defendants submit that the Applicant's counsel has not owned up to the mistake in his supporting affidavit and blames an abstract counsel who the court is not aware of. They submit that the onus of proof lay on the Applicant to prove that the facts as deposed and since there is no affidavit from the Advocate who failed to attend court on the said date, the same should fail.
 55. They submit that the reasons for non-attendance are not plausible for lack of electronic evidence to show an attempt to log into the court online portal and or call counsel for the Respondent to explain the difficulties or at the very least reach out to the court registry personnel for help.
 56. It is also their submission that no prejudice will be suffered by the Plaintiff if the application is not allowed for she has been keen on ensuring the matter never proceeds. They further submit that the Plaintiff herself has never bothered to attend court when the said application to reinstate an application for reinstatement of the suit was set for hearing. They rely on the judicial decision of *John Nahashon Mwangi vs Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR.
 57. They submit that the application has no plausible or reasonable grounds as the same amounts to employing delaying tactics so as to ensure the suit does not end. They submit that if the application is allowed, it will open a pandora's box where any party desirous of rolling back the wheels of justice would just allege that they attended the wrong court without actual evidence of the court logins.
 58. They submit that if at all counsel attended, any virtual meeting leaves a virtual foot print that can either be downloaded or screenshotted and none of these have been provided as evidence.
 59. It is their submission that the lack of interest is conspicuous because the counsel for the Applicant failed to attend court for hearing of an application to reinstate the suit which was dismissed for non-attendance and the application was dismissed for non-attendance as well. They rely on the judicial decision of *Alice Mumbi Nganga v Danson Chege Nganga & Another* [2006] eKLR.
 60. They submit that the application herein is meant to further vex the Respondents and put them in a never-ending cycle of litigation. They submit that the Applicant is the Plaintiff and therefore she is duty bound to ensure the matter comes to an end in the shortest time possible but she has adamantly failed in her obligation. They also submit that the decision to reverse or set aside an order of the court is



- discretionary and such discretion must be exercised fairly and judicially. They submit that for fairness to be attained, the court must be satisfied that reasons given are plausible and not mere allegations.
61. The 4th, 5th, 6th and 7th Defendants' submit that equity aids the vigilant but not the indolent and that the law encourages speedy resolution of disputes. They submit that failure by the Applicant to follow up or show up on a date the application was set for hearing is an indicator of indolence on her part.
 62. They submit that the Applicant has slept on her rights and acquiesced to the delay. Failure to perform diligence to know the court in which hearing takes place cannot be blamed on any other party other than the one alleging as that is something any counsel should enquire earlier. They submit that when it is the Applicant alleging no knowing the court, it is even worse as the Applicant should be highly motivated to pursue their matter as the aggrieved party.
 63. It is their submission that on the issue of prejudice, even if the court reinstates the application to reinstate the suit, the same lacks merit as it is unfounded and based on frivolous grounds. They submit that the application dated 9th February, 2023 has very minimal to no chances of success as the Applicant/Plaintiff was pleading ignorance on who her Advocates are yet she changed Advocates more than five times and in all the times, she filed affidavits indicating that her Advocates on record advised her on various issues. They submit that filing endless applications only serves to keep the Defendants in constant fear of litigation.
 64. They submit that the application is a contravention of the Respondent's rights under Article 50 to a fair trial. They submit that justice cuts both ways and the Respondent should also have a right to speedy resolution of the dispute pending before the court and there should be an end to litigation. They submit that Article 48 and 50 of *the Constitution* of Kenya guarantees every Kenyan the right to access to justice and fair hearing. They rely on the judicial decisions of *Equity Bank vs West Link MBO Limited* and *Hunker Trading Company Limited vs Elf Oil Kenya Limited*.
 65. It is their submission that this application is not meritorious and ought not be reinstated as the Respondent is prejudiced by the continued pendency of the suit which the Applicant had refused to prosecute since she filed it.
 66. They also submit that this court has been granted power to make any order and grant any relief as it deems fit and just including costs by Section 13 (2) (7) (a) of the *Environment and Land Court Act*. They submit that it is trite law that costs follow the event and they indulge this court to award costs in favour of the Defendant/Respondent.
 67. The 8th Defendant/Respondent filed submissions on 21st March, 2023. In its submission it gives a background of the case and identifies the following issue for determination:
 - a. Whether a suit or an Application dismissed for non-attendance can be reinstated.
 68. It submits that the legal framework on dismissal for non-attendance is found in Order 12 Rule 3. They also rely on the judicial decisions of *Utalii Transport Co. Ltd and 3 others vs N.I.C Bank and another* [2014] eKLR, *Bilha Ngonyo Isaac v Kembu Farm Ltd & Another* [2018] eKLR.
 69. The 8th Defendant/Respondent submits that the Plaintiff sued the Defendants sometime in 2018 and it is assumed that the Plaintiff had a legitimate cause of action against the Defendants having dragged the Defendants to court and therefore the Plaintiff ought to have been ready to prosecute her case to its very conclusion.
 70. It submits that it is surprising that even after filling this instant suit, the Plaintiff sought various adjournments just when the matter was set for hearing on 23rd November, 2021. It submits that the



Plaintiff sought adjournment for being indisposed and therefore another hearing date was set for 31st January, 2022.

71. The 8th Defendant/Respondent submits that when the matter came up for hearing on 31st January, 2022, the Plaintiff sought another adjournment as she was unwell which adjournment was allowed and the matter given another date of 23rd March, 2022. It submits that however, when the matter came up for hearing on the said date, the Plaintiff sought a further adjournment and all this while the Defendants were patient and understanding enough and never opposed these adjournments believing that the Plaintiff will act and prosecute the matter to its conclusion.
72. The 8th Defendant/Respondent also submits that the matter came up again for hearing on 18th January, 2018 however neither the Plaintiff nor her Advocate showed up in court. It submits that consequently, the Defendants' prayed that the matter be dismissed for non-attendance and the same was allowed. It is the 8th Defendant's/Respondent's submission that they made an application for reinstatement which again they failed to attend to on the material day.
73. The 8th Defendant/Respondent relies on the judicial authority of *Edney Adaka v Equity Bank [2014] eKLR*. It submits that it is deposed at paragraph 6 of the Supporting Affidavit that it is the Advocate to blame for failure to attend court. It further submits that in fact, according to the Advocate they allegedly attended the very court they had indicated was to hear the matter.
74. It further submits that it is evident from the above that the Plaintiff through her counsel has been an orchestrator of her own lethargy having had so many Advocates on record and the issue of which court they ought to have attended cannot fall on the Defendants.
75. The 8th Defendant/Respondent submits that it is also certain that the Plaintiff and her many counsels have always known which court the matter was to be heard but on the material day both were conspicuously absent despite knowledge of the hearing.
76. The 8th Defendant/Respondent submits that the Plaintiff was indolent in prosecuting her case. They rely on the decision in *Njue Njagi v Ephantus Njiru & Another [2016] eKLR*.
77. The 8th Defendant/Respondent submits that its understanding is that once a suit has been dismissed, the said order is interpreted as a judgment. It submits that the only option available for the Plaintiff is to seek review of the decision or appeal the same. It submits that the suit cannot be reinstated via the instant application before this Honourable Court.
78. The 8th Defendant/respondent submits that the Applicant's application is bad in law, mischievous, frivolous, vexatious. Totally incompetent, an abuse of court process and should be dismissed with costs to the Defendants'.

Analysis And Determination

79. I have considered the application, affidavit in support of the application, Grounds of Opposition and the rival submissions filed in this matter.
80. In my view, the questions that arise for determination are:
 - a. Whether the Honourable Court should set aside the orders dismissing the Plaintiff's application dated 9th February, 2023?
 - b. Who should bear the costs of this application?



A. Whether The Honourable Court Should Set Aside The Orders Dismissing The Plaintiff's Application Dated 9th February, 2023?

81. The Plaintiff/Applicant submits that the application dated 9th February, 2023 was scheduled for inter-parties hearing on the 2nd March, 2023. She submits that on 2nd March, 2023, the counsel in conduct of the suit logged in before Honourable Justice Ombwayo who had earlier issued directions in respect of the application.
82. The Plaintiff/Applicant submits that it was only then that counsel was informed that the matter was placed before this court which then prompted counsel to log in. They submit that when counsel logged in before this court, they were informed that the application dated 9th February, 2023 had been dismissed for non-attendance of the Advocate for the Applicant.
83. The Application dated 3rd March, 2023 was thus filed by the Applicant seeking among other orders to reinstate the application dated 9th February, 2023 and the same be settled for hearing inter-partes.
84. Order 12 Rule 7 of the Civil Procedure Rules provides that;
- “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 maybe just.”
85. The 8th Defendant in its written submissions submits that once a suit has been dismissed, the said order is interpreted as a judgment.
86. The Court of Appeal in *Njue Njagi v. Ephantus Njiru & Another* [2016] eKLR upheld the trial court which stated that:
- “Dismissal of a suit for none attendance by the plaintiff or for want of prosecution amounts to a judgment in that suit.”
87. The 4th, 5th, 6th and 7th Respondents have opposed the application and submit that the Applicant's counsel has not named the counsel who was holing brief, the Applicant's counsel has not owned up to the mistake and blames an abstract counsel who the court is not aware of and the Plaintiff has been keen on ensuring the matter never proceeds.
88. The court however finds that it has discretion to set aside judgment or order to avoid injustice or hardship resulting from an accident inadvertence or excusable mistake.
89. I have perused the direction issued on 6th March, 2023 and find that it is indeed true that they are not clear as to which court would hear the application. There is every likelihood that a party reading the directions would interpret them as directing the application to be heard before the Judge who issued the said directions. They are as follows
- “Mater not certified urgent. Serve within 7 days. Hearing on 22nd March, 2023.”
90. I am further guided by the judicial decision of *Florence Nyaguthii Muchemi v Attorney General & another* [2018] eKLR where it was stated that in considering whether to set aside the said proceedings or not, the Court will be guided by the following principles:
1. Whether there is sufficient reasons or explanation for non-attendance;



2. Whether there was unreasonable delay in filing the application; and
 3. Whether there will be any prejudice.
91. In the judicial decision of *Patel v. E.A. Cargo Handling Services Ltd* [1974] E.A. 75 the court stated that:
- “There are no limits or restrictions on the judge’s discretion except that if he does vary the judgment he does so on such terms as may be just... The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules.”
92. The Plaintiff/Applicant submits that it is in the wider interest of justice that the errors and/ or acts of omission occasioned by the advocate should not be adversely visited upon the Applicants herein.
93. In the judicial decision of *Remco Ltd...Vs...Mistry Jadua Parbat & Co. Ltd & Others*, Nairobi Milimani HCC No.171 of 2001 (1EA 233), where the Court held that: -
- “Blunders will continue to be made from time to time and it does not follow that because a mistake has been made, the party should suffer the penalty of not having his case heard on merit. The broad approach is that unless there is fraud or intention to overreach, there is not error or default that cannot be put right by payment of costs. The court is often said, exists for the purpose of deciding the rights of the parties and not imposing discipline”.
94. I find that the explanation offered by the Applicant for failure to attend court on 2nd February, 2023 is sufficient. Further, the instant application was filed within 3 days of the orders of 2nd March, 2023 hence no delay. I also find that no prejudice shall be occasioned to the Respondents if the application dated 9th February, 2023 is heard on merit.
95. Taking all these into consideration, the Plaintiff/Applicant has satisfied the Court that she is deserving of this court’s discretion in granting the orders as sought in the application dated 3rd March, 2023.

B. Who Should Bear The Cost Of This Application?

96. The general rule is that costs follow the event. This is in accordance with the provisions of Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason directs otherwise. However, in this case owing to the admitted mistake by the Plaintiff/Applicant, this court directs that the costs shall be in the cause.

Disposition.

97. The upshot of the foregoing is that the application dated 3rd March, 2023 is allowed in the following terms:
- a. The orders issued on the 2nd March, 2023, striking out the application dated 9th February, 2023 with costs together with all consequential orders arising therefrom are hereby set aside.
 - b. The application dated 9th February, 2023 is hereby reinstated.
 - c. The costs of this application shall abide the outcome of the suit.
98. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF DECEMBER,
2023.**

L. A. OMOLLO

JUDGE.

