



**Maitha v Kagiri & 2 others (Environment & Land Case
123 of 2018) [2025] KEELC 3371 (KLR) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3371 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 123 OF 2018**

JM ONYANGO, J

APRIL 23, 2025

BETWEEN

DR. JOSEPH MAINGI MAITHA PLAINTIFF

AND

RACHEL WAIRIMU NJERU KAGIRI 1ST DEFENDANT

REGISTRAR OF LANDS 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The Applicant, through a Notice of Motion dated 29th January 2024, seeks the reinstatement of a suit initially filed on 18th April 2018 and subsequently dismissed for want of prosecution on 8th April 2021. The motion is anchored upon the Applicant's supporting affidavit sworn on 29th January 2024.
2. In essence, the Applicant contends that he instructed the firm of Nyabena Alfred & Company Advocates to institute Thika ELC Case No. 123 of 2018 and that the plaint together with an application was duly filed on 19th April 2018.
3. According to the Applicant, he was informed by his erstwhile legal representatives that the nature of land disputes is such that resolution is often after prolonged periods. Trusting in the competence and candour of counsel, the Applicant awaited communication regarding the progression of the suit; the communication never came. Instead, what did come was the grim discovery that the suit had been dismissed for want of prosecution.
4. The Applicant now appears before this Court, not to deny the lapse, but to disavow responsibility for it. He pleads that the sin of silence was not his, but that of his advocates. He beseeches the Court to rescue his claim from the oblivion into which it has fallen, not as a matter of indulgence, but as a matter



of justice. The Applicant contends that it would be inequitable to punish the innocent client for the omissions and commissions of counsel.

5. The Application is robustly opposed by the 1st Respondent vide the Grounds of Opposition dated 9th July 2024 and the Replying Affidavit of one Rachel Wairimu Njeru Kagiri sworn on 12th November 2024.
6. The 1st Respondent argues that the Applicant has demonstrated neither diligence nor urgency. The 1st Respondent maintains that the delay is inordinate, the explanation insufficient, and the scales of justice must therefore tip in favour of finality.
7. Between these opposing poles by the parties lies this Court's solemn task: to determine whether this is a case where the scales of justice tip toward redemption, or final repose.
8. The Application was canvassed by way of written submission duly filed by the Applicant and 1st Respondent.

Issues for Determination

9. Having perused the Application, the Replying affidavit in opposition thereto and the parties' submissions, the sole issue that emerges for determination is:

Whether the Applicant is entitled to an order for reinstatement.

Analysis and Determination

10. The Court now turns to the heart of the matter, not merely to inspect the bones of procedure, but to breathe into them the spirit of justice. It must be determined whether the Applicant, now knocking upon the doors of equity, has shown cause sufficient to warrant the setting aside of the dismissal.
11. The power to dismiss a suit for want of prosecution is not exercised in a vacuum, it is grounded in the framework of the *Civil Procedure Rules*. Order 17 Rule 2(1) provides the procedural anchor for such dismissals, stating in clear and unequivocal terms that:

“in any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”
12. This provision serves both as a prod to indolent litigants and a safeguard for the efficient administration of justice.
13. Yet, even where the guillotine of dismissal has fallen, the law does not foreclose redemption. Order 12 Rule 7 comes to the aid of a deserving litigant, vesting the Court with discretion to set aside a dismissal “upon such terms as may be just.” Thus, the law, while stern in its expectations, is not devoid of mercy.
14. The question before the Court, therefore, is not whether dismissal was procedurally sound but whether the explanation tendered by the Applicant rises to the level of justice contemplated under Order 12 Rule 7.
15. Learned counsel for the Applicant submits that there was concerted effort by the Applicant to follow up on the case, firstly with the firm of Nyabena Alfred & Company Advocates and thereafter directly with the court via letters addressed to the Deputy Registrar.



16. Learned counsel for the Applicant submits, with palpable earnestness, that the Applicant did not sit idly by as the sands of time gathered over his claim. On the contrary, it is contended that the Applicant made sustained efforts to follow up on the matter, first through his then advocates, the firm of Nyabena Alfred & Company Advocates, and later, upon sensing silence and delay, by addressing direct written correspondence to the Deputy Registrar.
17. It is the Applicant's position that the delay, though considerable, has been adequately and candidly explained: he placed his faith in counsel, as any layperson is entitled to do, only to be met with neglect that culminated in the unfortunate dismissal of his suit.
18. To fortify his case, learned counsel for the Applicant places reliance on the persuasive authority of *John Nabashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR, where the court, in granting reinstatement, poignantly observed:

“The decision of the court is purely a matter of discretion which, as it has been said time and again, should be exercised judicially on defined principles of law... Article 50 coupled with Article 159 of *the Constitution* on the right to be heard and the constitutional desire to serve substantive justice to all parties, respectively, constitute the defined principles which should guide the court in making a decision on such a matter.”
19. The Court in Mwangi (Supra) went on to liken the dismissal of a suit for want of prosecution to the fabled “Sword of Damocles”; a drastic measure that should fall only when absolutely necessary. In this regard, counsel submits that the present application satisfies the test for reinstatement. The prejudice, if any, to the Respondent is outweighed by the grave injustice that would be visited upon the Applicant were he to be denied an opportunity to ventilate his claim.
20. In firm opposition to the Application, learned counsel for the 1st Respondent beseeches this Honourable Court to reject the prayer for reinstatement, grounding his objection on four cardinal pillars; each, he contends, sufficient on its own to fell the edifice of the Applicant's case.
21. First, counsel points to the passage of time with an accusatory finger: the present application, he notes, was brought more than three years after the suit had been dismissed. Second, he contends that the application for reinstatement was not filed with the urgency or diligence expected of a litigant seeking the Court's equitable discretion. Third, it is submitted that the Applicant's explanation for the delay is wanting in both substance and sufficiency. Lastly, counsel draws the Court's attention to the state of the record prior to dismissal; the suit, he submits, lay fallow for a full three (3) years, unprosecuted and untouched, before it was finally consigned to dismissal. Such prolonged inertia, he argues, betrays a lack of interest.
22. To fortify these submissions, learned counsel calls in aid the decisions in *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR and *Tana and Athi Rivers Development Authority v Jeremiah Kimigbo Mwakio & 3 others* [2015] eKLR, authorities which, in his view, underscore the necessity of upholding finality in litigation and guarding the judicial process against abuse cloaked in pleas for second chances.

Determination

23. I have considered the rival submissions with the anxious circumspection they deserve. On one side stands the Applicant, invoking the equitable jurisdiction of the Court and pleading that the doors of justice be reopened, his misfortune attributed to the failings of counsel rather than his own indifference. On the other, the 1st Respondent anchors her position in the immutable logic of delay,



urging the Court to uphold the sanctity of finality and to decline what she characterizes as an invitation to reward lethargy with indulgence.

24. It is an uncontroverted fact that this suit lay dormant for a full three (3) years before being dismissed suo moto on 8th April 2021 for want of prosecution. Four months thereafter, the Applicant despatched letters to the Deputy Registrar, beseeching the restoration of his cause. These post-dismissal overtures, though tardy, attest to a genuine if delayed desire to pursue substantive justice.
25. In addressing these circumstances, this Court is guided by Article 159 of *the Constitution* which enjoins the court to ensure that “justice shall be done to all, irrespective of their station in life, and that justice shall not be delayed or denied” and by the time-honoured principles of equity, which demand that discretion be tempered by both mercy and the need for finality.
26. In the crucible of Article 159’s rallying call for justice unshackled by mere procedure, equity compels this Court to set aside its own dismissal. The Applicant’s letters, though dispatched four months after the dismissal, evince an earnest attempt to correct counsel’s failings and to vindicate his substantive rights. To punish the Applicant for the omissions of his advocates would be to sacrifice justice on the altar of procedural exactitude.
27. Accordingly, I allow the instant application with no order as to costs.
28. The Applicant shall, within thirty (30) days from the date hereof, fully comply with the pre-trial provisions of Order 11 of the Civil Procedure Rules. In the event of the Applicant’s failure to comply with the foregoing within the time specified, the suit shall stand dismissed without further notice.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT THIKA THIS 23RD DAY OF APRIL 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Mr. Amukhale for the Applicant

Mr. Waweru for Mr. Chege for the 1st Defendant.

Court Assistant: Hinga

