



**Salaash & another v Partoti (Environment & Land Case
79 of 2018) [2022] KEELC 2768 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 79 OF 2018
MN GICHERU, J
JUNE 30, 2022**

BETWEEN

KORISA KAITUI SALAASH 1ST PLAINTIFF

LAMET ENE LAETUA SALAASH 2ND PLAINTIFF

AND

JULIUS MERITE PARTOTI DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated 8/12/2021. The said motion which is under Order 12 Rule 7 *Civil Procedure Rules* seeks to set aside the order dated 8th December, 2021 which dismissed the Plaintiffs' suit under Order 17 Rule 2(1) Civil Procedure Rules for want of prosecution.

The application is supported by five grounds and an eleven (11) paragraph affidavit sworn by Michael Wachira, an advocate of the High Court.

In the grounds and the deposition, it is explained how the advocate's internet system crashed as he was attempting to address the Court. By the time the system recovered, the suit had been mentioned in the counsel's absence and had been dismissed.

Counsel deposes that the Plaintiffs will be condemned unheard yet they are not to blame since the case was moved from Machakos to Kajiado making it difficult for the Plaintiffs' counsel to trace the file.

To compound the situation, Covid -19 came in and made access to justice complicated.

For the above stated reasons, counsel prays that the application be allowed, the suit be reinstated and heard on merit.

2. The application is opposed by the Defendant Julius Meritei Partoti who urges that the order of dismissal remains because the Plaintiffs have never attended court since 28th July, 2018.



3. Only the Plaintiffs' counsel filed written submissions on 5/4/2022. None were filed by the Defendant's counsel.
4. I have carefully considered the application dated 8/12/2021 in its entirety including the affidavits, grounds and submissions. I have also perused the entire record.

I find that it is fair and just that the order of dismissal dated 8/12/2021 be set aside.

A mistake or an error should not be allowed to derail the course of justice. The Plaintiffs have given a good explanation as to why the case has taken long.

The transfer from Machakos to Kajiado and then covid -19 which resulted in the interruption of normal Court schedules and activities are good reasons why no step was taken to expedite the conclusion of the case.

Finally, what is at stake is land said to be occupied by the Plaintiffs since time immemorial. I find merit in the application of 8th December, 2021 and I allow it in its entirety.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

