



**Gori Investment Limited v Basco Products (K) Limited & another; M.M. Gitonga Advocates LLP (Interested Party) (Environment & Land Case 1528 of 2016) [2022] KEELC 4837 (KLR) (19 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4837 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1528 OF 2016  
EK WABWOTO, J  
SEPTEMBER 19, 2022**

**BETWEEN**

**GORI INVESTMENT LIMITED ..... APPLICANT**

**AND**

**BASCO PRODUCTS (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DAVID N GICHOHI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**M.M. GITONGA ADVOCATES LLP ..... INTERESTED PARTY**

**RULING**

1. The application is premised on the matter being dismissed for want of prosecution on September 21, 2021. The plaintiff moved the court *vide* a notice of motion dated February 21, 2022 and a supporting affidavit sworn by Gopal Dhanji Patel.
2. The plaintiff sought the following orders:
  - i. That this application be certified as urgent and be heard *ex parte* in the first instance.
  - ii. That an *ex parte* order do issue granting leave to the firm of E Kinyanjui & Co Advocates to come on record for the Plaintiff in place of the firm of M M Gitonga Advocates LLP, the interested party.
  - iii. That the honourable court be pleased to reinstate ELC Suit No 1528 of 2016 which was dismissed on September 21, 2021, for want of prosecution.
  - iv. That the costs of this application be provided for.



- v. That the court be pleased to issue any other order it deems fit and just in the interest of justice.
3. It is the plaintiff's assertion that the matter was unattended due to the defendant's failure to serve a hearing notice as directed by the court. It was averred that the plaintiff has been ready and willing to prosecute the matter therefore failure to reinstate the suit would be unjust and allow the defendant to profit from the injustice.
  4. The interested party in support of the plaintiff's application reiterated that the defendant failed to serve the hearing notice which ultimately led to the dismissal. It was further highlighted that failure of the plaintiff's advocate to attend court ought to be construed as an inadvertent omission for which the plaintiff should not suffer.
  5. Relying on their replying affidavit dated March 31, 2022, the defendant asserted that the actions of the plaintiff portrayed indolence and moreover they lacked substantial proof as to why the plaintiff's advocate failed to attend court. It was submitted that litigation should come to an end thus praying for the application to be dismissed.
  6. The court is guided by Order 12 rule 7 of the Civil Procedure Rules which expressly provides as follows:

“...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.
  7. I have perused the court proceedings to confirm that since the commencement of the suit, the plaintiff has been keen to have the matter proceed for hearing. I have also considered the fact that on September 21, 2021 the day the suit was dismissed, the said date had been fixed by the court in the presence of the defendants and in the absence of the plaintiff and that the same was never served upon the plaintiff. I have further considered that although the reinstatement application was filed several months after the dismissal, the issues arising from the main suit are of great significance to both the plaintiff and defendants.
  8. For this reason, I hereby issue the following orders:
    - i. The order of dismissal given on September 21, 2021 is hereby set aside and the suit is reinstated for hearing.
    - ii. The firm of E Kinyanjui & Co Advocates is hereby granted leave to come on record for the Plaintiff in place of the firm of M M Gitonga Advocates LLP, the interested party.
    - iii. Costs of the application shall be reserved to abide the determination of the main suit.
  9. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2022**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

N/A for the Plaintiff/Applicant.

Mr. Kangethe for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondent.



Mr. Lemaiya for the Interested Party

Court Assistant; Caroline Nafuna.

E. K. WABWOTO

JUDGE

