



REPUBLIC OF KENYA



**KENYA LAW**  
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**Irungu v Inanga & another (Environment & Land Case 27 of 2020)  
[2022] KEELC 13748 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13748 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 27 OF 2020  
CK YANO, J  
OCTOBER 26, 2022**

**BETWEEN**

**SAMSON MACHARIA IRUNGU ..... APPLICANT**

**AND**

**NELSON KINYUA INANGA ..... 1<sup>ST</sup> RESPONDENT**

**TIMOTHY MUNYAMBU M'R IMBERIA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application for determination is the notice of motion dated 24<sup>th</sup> June 2022 in which the plaintiff/applicant is seeking to set aside the order made on 11<sup>th</sup> November, 2021 dismissing the plaintiff's suit for non-attendance and have the suit reinstated for hearing and determination on its merits.
2. The application is brought under Order 12 Rule 7 of the *Civil Procedure Rules*, Section 3 and 3A of the *Civil Procedure Act* and Order 51 Rules 1, 3 and 4 of the Civil Procedure Rules.
3. The grounds upon which the application is predicated are that the Deputy Registrar fixed the matter for directions before the court (C.K. Nzili J) on 11<sup>th</sup> November, 2021 but was however not listed on the daily cause list and that when a representative of the plaintiff's advocates made an inquiry he was informed that the file could not be traced at that time and was advised to check later and fix a fresh date. That the plaintiff's advocate wrote a letter dated 21<sup>st</sup> June 2022 to the court requesting for a fresh mention date but when their representative visited the registry, he was shocked to learn that the matter came up before court on 11<sup>th</sup> November, 2021 virtually through Microsoft teams and was dismissed for non-attendance and file closed. The plaintiff stated that he is desirous of being heard on merits and pleads with the court to reinstate the matter.
4. The application is supported by an affidavit sworn by Dr. Samson Macharia Irungu on 24<sup>th</sup> June 2022 whose deposition as detailed basically explains out the grounds upon which the application is predicated and setting out the history of the matter, and annexing a letter dated 21<sup>st</sup> June 2022 and



an email to court of the same. It is also stated that the defendant was duly served with the pleadings and summons to enter appearance and an affidavit of service filed, but did not enter appearance within the required time or at all. The plaintiff avers that this application was made as soon as he found out about the dismissal.

5. I have considered the application. The record shows that this matter was listed for directions before the judge on 11<sup>th</sup> November, 2021. When the matter came up virtually via Microsoft teams before C.K. Nzili J, none of the parties was present in court and the court dismissed the case for non-attendance.
6. Order 12 rule 3 of the Civil Procedure Rules allows the court to dismiss a suit for non-attendance while Rule 7 allows an aggrieved party to apply to set aside that order and reinstate the suit. The reason given by the applicant for their non-attendance on 11<sup>th</sup> November, 2021 is that the matter was not in the daily cause list of that day and that when they inquired, the representative of the advocate for the applicant was informed that the file could not be traced at that time, and was advised to check later with a view to fixing a fresh date. That when a letter dated 21<sup>st</sup> June 2022 was written requesting for a mention date, they were surprised to learn that the matter came up before court on 11<sup>th</sup> November, 2021 virtually through Microsoft teams and was dismissed for non-attendance and file closed.
7. From the material before court, I am satisfied that the failure to attend court was not intentional or deliberate on the part of the applicant and his advocates. In my view, the failure to attend court has sufficiently been explained and the same is excusable. Hence the applicant ought not be shut out from exercising his statutory right to be heard on the matter on merit.
8. Accordingly, I am satisfied that the notice of motion dated 24<sup>th</sup> June 2022 is merited. The application is allowed. The order made on 11<sup>th</sup> November, 2021 dismissing the suit is set aside and the case is reinstated for hearing on merit. Costs shall be in the cause.
9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022.**

**In presence of**

C.A Mwenda

No appearance for all the parties.

**C.K YANO**

**ELC JUDGE**

