



Laban v Kiriimi; Kiriimi (Interested Party) (Environment and Land Appeal 9 of 2018) [2022] KEELC 15111 (KLR) (30 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 9 OF 2018
CK NZILI, J
NOVEMBER 30, 2022**

BETWEEN

PAULINE MUTHONI LABAN APPLICANT

AND

MOSES MBOGORI KIRIMI RESPONDENT

AND

TABITHA GACHERI KIRIMI INTERESTED PARTY

RULING

1. The court by a notice of motion dated July 18, 2022 is asked to reinstate the application dated July 29, 2019 and allow the proposed interested party as appointed to substitute the respondent now deceased.
2. The grounds of the application are set out on the face of the application and repeated in the supporting affidavit sworn by Pauline Muthoni Laban on the even date.
3. The applicant states that her application dated February 15, 2022 was dismissed for non-attendance out of internet technical hitch making it impossible for her advocates to log in virtually. She therefore urged the court to be guided by the overriding objective under article 159 of the Constitution to allow for the substitution so that the appeal can be heard on merits.
4. The application is opposed by the respondent's grounds of opposition dated August 12, 2022 on account of *res-judicata*, subjudice, indecision, indolence, doctrine of laches, abuse of court process, incompetence and lack of merits.
5. The applicant relies on written submissions dated September 23, 2022.
6. On reinstatement of the application the application urged the court to find she had met the legal test as outlined in Wanjiku Kamau v Tabitha Kamau & 3 others (2014) eKLR. The court is urged to find the



- ordinary glitches on virtual courts due to technology lapses; the advocates are based in Nairobi, Covid 19 pandemic and the subject matter belonging to the parties as beneficiaries. The court is urged to be guided by *John Nabashon Mwangi v Kenya Finance Bank Ltd in (liquidation) (2015) eKLR*.
7. The applicant further urged the court to find the application not guilty of laches as held in *Abigael Barma v Mwangi Theuri* ELC No 393 of 2013, *Utalii Transport Co Ltd & 3 others v NIC Bank & another (2014) eKLR*.
 8. As regard res sub-judice and res -judicata, the court is urged to find that no final judgment on merit has been rendered herein as held in *Christopher Kenyariri vs Salama Beach (2017) eKLR*, *Tee Gee Electrics & Plastics Co Ltd v Kenya Industrial Estates Ltd (2005) KLR 97*
 9. The court has the power and discretion to reinstate a dismissed suit or an application. In exercising that discretion, the court in *Richard Ncharpi Leiyagu v IEBC & 2 others (2013) eKLR* held that the right to a hearing was a valued right which was not only constitutionally entrenched but also a cornerstone of the rule of law and could only be withheld in exceptional circumstances.
 10. In *Jaldesa Tuke Dabelo v IEBC & another (2015) eKLR*, it was stated that the exercise of discretion under article 159 of the *Constitution* was unfettered especially where procedural technicalities pose an impediment to the administration of justice.
 11. Turning to section 1A & 1B of the *Civil Procedure Act* the court in *City Chemist (NRB) Mohamed Kasabuli vs Oriental Commercial Bank (Ltd) 2008 eKLR* held the application of the overriding objective principle of the court mandates the court to act justly and fairly so that the ends of justice are met to all parties involved.
 12. In *Director General National Employment Authority v AL Hujra Agencies Ltd* Civil Application E188 of (2020) (2022) KECA 379 (KLR) (March 4, 2022) ruling, the court held a reasonable and plausible reason for non-attendance was sufficient demonstration. The court also said there being no demonstratable prejudice by the opposite party if the reinstatement was made by way of a replying affidavit there was need to reinstate the dismissed application.
 13. In this application, the respondent has not denied that the respondent to the appeal passed on; that the applicant herein is a co-wife and also a beneficiary of the estate of the respondent, that the applicant is now possessed with the limited grant of letters of administration and lastly, that it is in the interest of justice to bring on board the applicant so that the appeal can be heard on merits.
 14. Further, the respondent has not denied that the applicant's counsel was faced with technological challenges; hence the reason he was unable to appear before court.
 15. Further, the respondent though relying on the doctrine of sub-judice, laches and indolence has not demonstrated when the appeal was heard on merits or for that matter, the application for substitution.
 16. Mistakes are bound to happen and once they happen, a court of law is bound to consider all circumstances obtaining at each specific case.
 17. The applicant and his advocates on record do not appear to be falling within the character in *Shah vs Mbogo & another (1967) EA 116* who are out to deliberately obstruct or delay the cause of justice.
 18. In my considered view the explanation by the applicant is reasonable and genuine. The subject matter is also yet to be distributed such that it can be said to be beyond the reach of the court. Similarly, any prejudice occasioned to the respondent out of the inordinate delay can be compensated by way of costs. The applicant has also filed a record of appeal to fast track the hearing of this appeal.



19. In the circumstances, I find the application herein with merits. I reinstate the application dated July 29, 2019. The same is also allowed. The proposed interested party and the applicant herein is allowed to substitute the deceased respondent by virtue of limited grant of letters of administration ad litem dated October 24, 2018.
20. The memorandum of appeal shall be amended within 14 days from the date hereof to reflect the changes. Parties to list the appeal for directions within 30 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu

Appellant

Miss Akinyi for Anyoka for applicants

HON C K NZILI

ELC JUDGE

