



Jefwa v Kamimi Company 1976 Limited & others (Environment & Land Case 245 of 2014) [2025] KEELC 130 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELC 130 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 245 OF 2014
FM NJOROGE, J
JANUARY 23, 2025**

BETWEEN

KAHINDI KENGA JEFWA PLAINTIFF

AND

KAMIMI COMPANY 1976 LIMITED & OTHERS DEFENDANT

RULING

1. The plaintiff filed a notice of motion dated 23rd September 2024 in which sought the following prayers:
 - a.spent;
 - b. An order that this honourable court be pleased to review/vary and/or set aside its orders made on 2/3/2022 dismissing this matter for want of prosecution;
 - c. That this honourable court be pleased to reinstate this suit/matter for hearing and disposal;
 - d. That this honourable court be pleased to make such other order or further orders as it may deem fit or expedient;
 - e. That costs of this application be provided for.
2. The application has grounds upon which it is based listed at its foot. It is also supported by an affidavit of the plaintiff dated 23/9/2024. The grounds are that the plaintiff's failure to attend court on 2/3/2022 was not deliberate; that dismissal was due to the omission on the part of his counsel to attend court to prosecute the matter; that the suit land belonged to the plaintiff's father; that the plaintiff is old and sickly and the suit land is his only home where his ancestors are buried; that the notice to show cause giving rise to the said dismissal is dated 29/11/22 whereas the purported dismissal took place on 2/3/2022 which is an error on the face of the record warranting setting aside or review.



3. The application arose from a dismissal order made on 2/3/2022 vide which the suit was dismissed for want of prosecution.
4. The application is unopposed. I have nevertheless considered the grounds for the application for their merit. I have especially considered the discrepancy in the notice to show cause and the dismissal order. It is clear that the matter was dismissed on 2/3/2022 and the notice is dated 29/11/2022. It is not indicated on which date the notice was served and so it is not possible to label the discrepancy as a mere typographical error of no consequence when the plaintiff's right to prosecute the suit on its merits has been annulled by the dismissal decree prior to trial.
5. For the foregoing reason I find that the application dated 23/9/2024 has, merit and it is hereby allowed as prayed in prayers no. 2 and 3 thereof. The dismissal order made on 2/3/2022 is hereby vacated and the present suit is hence reinstated for hearing on its merits on condition that the plaintiff will have filed and served his comprehensive trial bundle duly indexed and paginated by 5/2/2025 and be ready to be issued a hearing date in default of which the orders issued herein shall stand vacated. The costs of the application shall be in the cause. This suit shall be mentioned on 5/2/2025 for a pretrial conference.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 23RD DAY OF JANUARY 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

