



**Marionson Holdings Limited t/a Marion Preparatory School v Mugonya & 3 others
(Environment & Land Case 149 of 2017) [2025] KEELC 4110 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4110 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 149 OF 2017**

OA ANGOTE, J

MAY 22, 2025

BETWEEN

**MARIONSON HOLDINGS LIMITED T/A MARION PREPARATORY
SCHOOL PLAINTIFF**

AND

**CYRUS NGUGI MUGONYA 1ST DEFENDANT
SAMUEL KAMAU WAWERU 2ND DEFENDANT
JOHN THUO KABUTHA 3RD DEFENDANT
PAUL WACHIRA IREGI 4TH DEFENDANT**

RULING

1. Before this Court for determination is the Plaintiff's/Applicant's Notice of Motion dated the 21st February, 2025, brought pursuant to the provisions of Articles 40(1) and (2) of the Constitution, Sections 1A, 1B, 3, and 3A of the Civil Procedure Act and Order 12 Rule 7 of the Civil Procedure Rules seeking the following reliefs:
 - i. That the proceedings on the 20th February, [January] 2025, and the orders/directions issued on the said date dismissing this suit be set aside.
 - ii. That this matter be issued with a hearing date upon which the Applicant's case will be heard on merit.
 - iii. That the costs of this Application be in the cause.
2. The Application is based on the grounds on the face of the Motion and supported by the Affidavit of Advocate Mwangi Munyuga of an even date, who has deponed that he is the Advocate with the conduct of the matter on behalf of the Plaintiff; that on 20th June, 2024, this matter came up for hearing



but he was unable to proceed not having procured the attendance of the Plaintiff and that the parties agreed that the matter be adjourned to 20th January, 2025.

3. The Plaintiff's advocate deponed that on the said morning, he had multiple other matters and as such, he erroneously diarized the hearing date as 20th February, 2025 as opposed to January and that as a result of the mis-diarization, he was not present when the matter was due for hearing on the 20th January, 2025 leading to its dismissal for want of prosecution.
4. He noted that the error was unforeseen and as such could not have been avoided. He urged the court to allow the Motion and accord the Applicant an opportunity to be heard. No response was filed to this Motion. No submissions were filed.
5. Having considered the Motion, the sole issue that arises for determination is whether there are sufficient reasons to warrant the reinstatement of the suit.
6. Vide the present Motion, the Plaintiff seeks to reinstate the present suit which was dismissed for non-attendance on 20th January, 2025. There is no opposition to the application.
7. Order 12 Rule 3(1) of the [Civil Procedure Rules](#) provides that if on the day fixed for hearing, after the suit has been called out for hearing outside the court, only the Defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.
8. However, Order 12 Rule 7 of the [Civil Procedure Rules, 2010](#) gives this court discretion to reinstate a suit that has been dismissed as aforesaid and stipulates 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.”

9. The exercise of this discretion is not intended to aid a person who deliberately seeks to obstruct justice but to avoid hardship resulting from an accident, or excusable mistake or error. This position was expressed in the case of *Shah v Mbogo & Another* [1967] EA 116, where the Court of Appeal of East Africa held that:

“The discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice”.

10. More recently, the Court of Appeal in [Patriotic Guards Limited v James Kipchirchir Sambu](#) [2018] eKLR stated that:

“...It is settled law that whenever a court is called upon to exercise its discretion, it must do so judiciously and not on caprice, whim, likes or dislikes. Judicious because the discretion to be exercised is judicial power derived from the law and as opposed to a judge's private affection or will. Being so, it must be exercised upon certain legal principles and according to the circumstances of each case and the paramount need by court to do real and substantial justice to the parties in a suit.”

11. The Court in [Wachira Karani v Bildad Wachira](#) [2016] eKLR appreciated that the threshold to be met by an Applicant seeking to have the court set aside its orders as aforesaid is the demonstration of



sufficient cause. As to what constitutes sufficient cause, the Court of Appeal in the case of *BML v WM* [2020] eKLR, explained:

“What amounts to sufficient cause depends on the circumstances of each case and the court is called upon to exercise its discretion depending on the said circumstances. Musinga, JA in the case of *The Hon. Attorney General v the Law Society of Kenya & Another*, Civil Appeal (Application) No. 133 of 2011 (ur) defined sufficient cause to be:

“Sufficient cause” or “good cause” in law means: ...the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused”. See Black’s Law Dictionary, 9th Edition, page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

Similarly, the Supreme Court of India in the case of *Parimal v Veena* [2011] 3 SCC 545 observed that:

“Sufficient cause” is an expression which has been used in large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore the word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, “sufficient cause” means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been “not acting diligently” or “remaining inactive.” However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.”

12. By way of a brief background, the Plaintiff instituted this suit on the 6th March, 2017 seeking inter-alia permanent injunctive orders restraining the Defendants from interfering with the suit property, and eviction orders against the Defendants.
13. It was the Plaintiff’s case that it runs Marion Preparatory School which is the legitimate proprietor of the parcel of land known as Primary School Site Kahawa West (suit property). The Plaintiff stated that the Defendants, its agents and/or servants forcefully trespassed onto the suit property claiming the same and were in the process of erecting structures thereon.
14. In response, the Defendants denied the alleged trespass stating that they only developed their lawfully allotted parcels of land located adjacent to the Plaintiff’s parcel and which issue was exhaustively adjudicated upon by the defunct Nairobi City Council.
15. On the 20th January, 2025, the matter was due for hearing. Neither the Plaintiff nor his counsel were present leading to the dismissal of its case. Counsel for the Plaintiff asks this court to reinstate the same contending that the Plaintiff’s failure to attend court was occasioned by counsel on account of his misdiarization of the date the matter was due.
16. The court has considered the record. Simultaneously with the institution of the suit, the Plaintiff filed a Motion for temporary injunctive orders which was declined vide the court’s ruling of 8th March, 2018. The Plaintiff filed a Motion for review of the aforesaid determination which was equally declined



- on the 20th December, 2018. Thereafter, pre-trial commenced and the matter was certified ready for hearing which was scheduled for the 10th December, 2020.
17. On the 10th December, 2020, the matter did not proceed on account of the Plaintiff. Counsel for the Plaintiff informed the court that he was served with the hearing notice late and had not contacted his client.
 18. The matter was next scheduled for hearing on the 28th September, 2021. On the said date, while having initially stated that they were ready to proceed, counsel for the Plaintiff later informed the court that the witness was not available having been admitted in hospital. The matter was scheduled for hearing on 28th July, 2022.
 19. On 28th July, 2022, counsel for the Plaintiff was again not ready to proceed stating that the witness was admitted at hospital. The matter was adjourned to 19th July, 2023. On 19th July, 2023, the parties consented to taking another date on account of the ongoing protests in Nairobi while on the 31st January, 2024, the matter was adjourned on account of the Defendant. The court granted a last adjournment.
 20. On the 25th June, 2024, Counsel for the Plaintiff was once again not ready to proceed and sought for an adjournment contending that the witness was unwell. The matter was next scheduled for hearing on the impugned date.
 21. While it may well be that Counsel misdiarized the date, leading to his failure to attend court 20th January, 2025, the record of the court demonstrates that the Plaintiff's absences/unreadiness has been the norm rather than the exception.
 22. It is now well settled that the primary responsibility for taking steps to progress a matter lies with the litigants themselves, and they must demonstrate diligence and interest in prosecuting their cases. This duty is even more pronounced for a Plaintiff, who invokes the court's jurisdiction by initiating the suit and thereby subjects the Defendants to litigation.
 23. This position was well articulated by the court in *Utalii Transport Co. Ltd and 3 Others v N.I.C. Bank and Another* [2014] eKLR, which stated thus:

“It is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court.”
 24. It is also the duty of the parties to assist the court to adjudicate on the matters brought before it expeditiously as was held in *Thomas Mwaura Gitau & Another v Eric Mubati & 2 Others* [2012] eKLR when the learned judge quoted from the finding of Warsame J. in the case of *Mobil Kitale Service Station v Mobil Oil Kenya Ltd* HCCC No. 205 of 1990 (unreported) as follows:

“It is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose of matters expeditiously.”
 25. The conduct of the Plaintiff and his counsel in this matter runs contra to the overriding objective calling for expeditious resolution of disputes. That a matter filed in 2017, has yet to proceed for hearing despite having been set down on several occasions is of great concern.
 26. Although dismissal of a suit is a draconian order which has the effect of driving away a litigant from the seat of justice, a litigant is equally expected to be vigilant in pursuing and ensuring that his case is prosecuted without undue delay and with all fairness to the other party. Speaking to this, the court in



“Ultimately, it may as well be customary that courts should in the interest of justice lean towards according parties to litigation the opportunity to ventilate their cases before eventual determination as opposed to what has been termed as “draconian” the move to dismiss suits precipitously. However, in the face of a Constitution that expressly advocates for justice to all and which must be dispensed without delay, and in the face of overriding principles alluded to above, the time for change of the customary mind set is here. Litigants should therefore stand guided that they must embrace themselves to up the gear, for speed and vigilance will now be the trend. The wheels of justice will no longer be turning on the thrust of a team engine.”

27. In view of the foregoing, the Court finds that the explanation given by counsel of having misdiarised the date when the matter was scheduled for hearing un plausible. In any event, counsel did not annex the diary for 20th January, 2025 to convince the court that indeed he did not indicate the matter in his diary as coming up for hearing on that date. Annexing the diary for 21st February, 2025 was not enough.
28. For those reasons, the application dated 21st February, 2025 is unmerited and the same is dismissed with no order as to costs.
29. For avoidance of doubt, the suit stands dismissed as ordered by the court on 20th January, 2025.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 22ND DAY OF MAY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ochieng Oduol for 1st Defendant

Mr. Arunda for Plaintiff

Mr. Allan Kamau for Attorney General

Mr. Brian Ikol for National Land Commission

Court Assistant: Tracy

