

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC SUIT NO. 209 OF 2018

FLORA IMPEX LIMITED.....PLAINTIFF

-VERSUS-

THE KENYA RURAL ROAD AUTHORITY & 4 OTHERS.....DEFENDANTS

RULING

(Application seeking to reinstate a motion that was dismissed for non-attendance; motion being one for enjoining parties to the suit, and leave to amend pleadings; counsel stating that he had technical difficulties in joining the virtual court proceedings; application for reinstatement allowed but court commenting that counsel had a duty to notify his counterparts and court of any technical glitches he may have suffered)

1. The application before me is dated and filed on 18 November 2020. The plaintiff/applicant is praying for orders to set aside the order which dismissed its application dated 27 February 2020, for failure to prosecute, which order was made on 16 November 2020.
2. The main prayer in the dismissed application was to have Kenya Airports Authority and the National Land Commission enjoined as defendants in the suit and thus the applicant wished to be granted leave to effect the said amendment.
3. The date of 16 November 2020 for the hearing of the dismissed application was taken by counsel for the applicant. On the said date, there was no attendance on the part of counsel for the applicant and I proceeded to dismiss the application for failure to prosecute it.
4. In the present application, counsel for the applicant alleges that he had technical difficulties in joining the virtual court platform when the dismissed application came up for hearing. He further states that he only managed to join the virtual proceedings after the matter had already been called out and subsequently dismissed.
5. Counsel for the 2nd and 3rd defendants stated that they did not wish to oppose the application, while counsel for the 4th proposed defendant opposed the application. She stated that the application did not raise sufficient cause for reinstatement, and that it was upon counsel to zealously represent their client by ensuring stable internet.
6. This application is principally based on grounds that counsel did not attend virtual court due to technical glitches. This may be a possibility, though going forward, I would urge any counsel having difficulties to either contact his or her counterparts, or the court assistant, to alert them of any challenges that they may be having. There is no evidence that counsel tried these options and he can blame nobody but himself for the dismissal. Be that as it may, I wouldn't want to visit the mistakes of the counsel on a litigant. I will therefore reinstate the dismissed application. The applicant will however pay thrown away costs of Kshs. 1,000/= to each counsel who was present on 16 November 2020.
7. Orders accordingly.

DATED AND DELIVERED THIS 11TH DAY OF MARCH 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA