

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 565 OF 2011

JOSEPH KAHINDI NYALE & 5 OTHERS.....APPLICANTS

-VERSUS-

HENRY CLEMENT FARAH & 7 OTHERS..... RESPONDENTS

RULING

(Application seeking to reinstatement a suit; suit dismissed for non-attendance of the applicants; suit being one for adverse possession; counsel stating that link to the virtual court proceedings were not availed; court in doubt as links are not personal to counsel; court in own discretion allowing the application but subject to throw away costs)

1. The application before me is one dated 1 September 2020, and filed on 2 September 2020. The applicants are seeking orders to set aside the order for dismissal of the main suit issued on 1 September 2020.
2. To put matters into context, the suit was initiated by way of originating summons dated 14 October 2011. The applicants claim to be owners, by way of adverse possession, of Plot Number 55 Section II Mainland North (hereinafter referred to as the 'suit property'). The applicants contend that despite the 1st -7th respondents being the registered owners of the suit property, the applicants have been in occupation, possession and control of the suit property for more than twenty years. The originating summons was opposed by a replying affidavit sworn by the 6th respondent. He deposed that the 5th and 6th respondents are the joint owners of the suit property, and that the 1st-4th and 7th respondents have long passed away.
3. The matter was fixed for hearing on 1 September 2020, but only Mr. Jumbale, learned counsel for the 6th respondent, attended the virtual court. There was no appearance on the part of Ms. Shariff, learned counsel for the applicants, despite being duly served with the hearing notice. Given the absence of the applicants, the court, Matheka J, dismissed their suit for non-attendance.
4. This application is principally based on the grounds that counsel did not attend virtual court due to lack of the link. She claims that no link was sent to her email or telephone number as is the practice.
5. Virtual court proceedings have been part of court process for almost a year now. I have my doubts as to the allegation that the link was not sent to counsel, for as far as my knowledge goes, the links to attend court are open to the public and there is no specific link that is supposed to be sent to counsel. Nonetheless, so that the applicants are not shut out, I will, in my discretion, allow this application and reinstate the suit. The applicants will however pay throw away costs of Kshs. 10,000/= to the 6th respondent whose counsel was present in court and ready to proceed. The said costs be paid within the next 14 days or else this suit will remain dismissed.
6. Orders accordingly.

DATED AND DELIVERED THIS 11TH DAY OF MARCH, 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA