



Nzomo & 2 others (Suing for and on Behalf of Komarock Residents Association (KRA)) v Mwangi & 8 others (Environment & Land Case E454 of 2021) [2025] KEELC 4965 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4965 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E454 OF 2021**

CA OCHIENG, J

JULY 2, 2025

BETWEEN

**PAUL NZOMO 1ST PLAINTIFF
MOSES KAMAU NJOROGE 2ND PLAINTIFF
JANE WACEKE KAMONJO 3RD PLAINTIFF
SUING FOR AND ON BEHALF OF KOMAROCK RESIDENTS ASSOCIATION
(KRA)**

AND

**NANCY WANJIRU MWANGI 1ST DEFENDANT
GEOFFREY WAMALWA 2ND DEFENDANT
ANCENT MUMO 3RD DEFENDANT
LILIAN KABOLE 4TH DEFENDANT
CHARLES ONDATI 5TH DEFENDANT
NATIONAL CONSTRUCTION AUTHORITY (NCA) 6TH DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 7TH
DEFENDANT
DIRECTOR GENERAL NAIROBI METROPOLITAN SERVICES
(NMS) 8TH DEFENDANT
DIRECTOR GENERAL PHYSICAL PLANNING AND DEVELOPMENT
COUNTY GOVERNMENT OF NAIROBI 9TH DEFENDANT**



RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated the 14th August 2024. The Plaintiffs' seek the following Orders:
 - a. Spent.
 - b. That the Honourable Court be pleased to issue an Order setting aside its Orders issued on 30th July 2024 dismissing the matter pending determination and having the file closed and removed from pending statistics and to have the suit reinstated and the same be set for hearing on priority basis.
 - c. That cost of this application be provided for.
2. The application is premised on grounds on its face and on the supporting affidavit of Chriss Ochieng Omburo, Advocate. He avers that according to the Judiciary Case Tracking System (CTS), Directions were issued on 26th July 2024 by Hon. Justice M.D Mwangi and the matter was fixed for mention for the hearing of an application dated 24th July 2024, on 30th July 2024, before Hon. Lady Justice Mbugua, but he was not aware that the matter was slated for mention on 30th July, 2024, as he hardly receives any SMS notification from the E-Filing System, an issue that many other law firms face.
3. He claims that he learnt through the Judiciary Case Tracking System (CTS) that Hon. Lady Justice Mbugua J dismissed the matter on 30th July 2024 for non-attendance. He contends that failure to attend court on the said date was not an intentional mistake, thus the Plaintiffs should not be denied the opportunity to be heard as they are desirous of prosecuting the suit, against the Respondents. Further, that nobody will be prejudiced in any manner by allowing this application while the Plaintiffs would suffer injustice, prejudice, irreparable loss and damage if the said Orders sought are not granted.
4. The application is opposed by the 2nd Defendant who filed a replying affidavit. He avers that the Plaintiffs ceased being officials of Komarock Residents Association (KRA) on 4th August 2024, upon elections being held and new office holders elected. He annexed minutes of the said association's Annual General Meeting held on 4th August 2024.
5. He contends that since the instant suit, initiated by the Plaintiffs who are previous officials of Komarock Residents' Association was dismissed on 8th August 2024, any application seeking for the reinstatement of the already dismissed suit, during the term of the new office holders, requires the express consent and authorization of the new officials and such express consent and authorization has neither been alleged nor exhibited, thus the application has no legal legs to stand on. He insists that the averments in the supporting affidavit to the Plaintiffs' application is full of falsehoods. He aligns himself with the 8th Defendant's Grounds of Opposition.
6. The application is opposed by the 4th and 5th Defendants vide the 5th Defendant's replying affidavit. His averments mirror those of the 2nd Defendant, that the Plaintiffs are not the officials in office and that they lack authority of the new officials of the Komarock Resident's Association to prosecute instant the application. He avers that the Plaintiffs have been reluctant to prosecute the main suit by having recurrent adjournments.
7. The application is also opposed by the 8th Defendant which filed Grounds of Opposition dated the 11th September, 2024. It contends that the Plaintiff's non-attendance to prosecute their suit and subsequent application is a general and repeated occurrence in the prosecution of this suit. Further, that the



Plaintiffs had been granted a last adjournment by Hon. Lady Justice L. Mbugua on 13th February, 2024, to ensure compliance with Pre-Trial Directions by 6th May, 2024. However, they failed to comply with the said directions and further failed to attend a mention on 6th May, 2024 to confirm compliance. Further, that on 8th of July 2024, the court noted that the Plaintiffs had failed to comply with the Pre-Trial Directions issued and noted their absence at the mention to confirm compliance. It reiterates that the Plaintiffs were also absent on the said date, thus their suit was dismissed.

8. The Plaintiffs thereafter filed an application dated 24th July, 2024 seeking the setting aside of the orders issued on 8th July 2024 dismissing the suit, but yet again failed to prosecute the said application, as they failed to appear in court for its hearing on 30th July 2024, thus the said application was dismissed for non-attendance with the Court marking their matter as closed. Subsequently, they filed the instant application, which is incompetent as there is no suit pending in Court.
9. The application was canvassed by way of written submissions.

Submissions

10. The Plaintiffs in their submissions reiterate the averments in the respective affidavits and contend that the circumstances of this case are sufficient to persuade the Court that the non-attendance by their advocate at the hearing of the dismissed application dated the 24th July 2024, was not a deliberate attempt to obstruct or delay justice.
11. They argue that the door of justice should not be closed to them for the mistake of Counsel. In this regard, they rely on the case of *Belinda Murai & Others v- Amos Wainaina (1978) LLR 2782*. They also submit that Courts must dispense substantive justice in line with the Constitutional imperative in Article 159 of *the Constitution* of Kenya, that justice shall be administered without undue regard to procedural technicalities. To this end, they relied on the case of *Bilha Ngonuo Isaac vs. Kembu Farm Ltd & Another [2018] eKLR*.
12. The 4th and 5th Defendants filed joint submissions reiterating the averments in the replying affidavit sworn by the 4th Defendant. They submit that the procedural posture of the case does not permit the instant application as the only option currently available to the Plaintiffs', is to seek orders to set aside the orders of 30th July 2024 for dismissal of the Application dated 24th July 2024 for non-attendance. Further, it can then subsequently reinstate the Application dated 24th July 2024 for hearing and determination on merit.
13. On its part, the 8th Defendant submits that Plaintiffs failed to meet the well-established principles set out for reinstatement of suit as stated in the case of *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation) [2015] KEHC 6789 (KLR)*.
14. It also aligns itself with the 2nd, 4th and 5th Defendants' position and submits that the Applicants' lack locus standi to file the present application, as no authorization has been provided by the newly appointed officials.
15. It insists that it is highly prejudicial for the Defendants to shoulder a never-ending litigation process and incur legal costs despite having attended Court in all instances to defend the Plaintiffs' suit and subsequent applications. To buttress its averments, the 8th Defendant relied on the following decisions: *Peter Kiplagat Rono Vs Family Bank Limited (2018) eKLR Ngugi v Thogo (Civil Application 372 of 2018) [2021] KECA 88 (KLR) (22 October 2021) (Ruling)* and *Richard Ncharpi Leiyagu vs Independent Electoral Boundaries Commission & 2 Others [2013] eKLR*.



Analysis and Determination

16. Upon consideration of the instant Notice of Motion application including the Grounds of Opposition, respective affidavits and rivaling submissions, the only issue for determination is whether this suit should be reinstated and if the Plaintiffs have locus standi to file the said application.
17. The Plaintiffs seek an Order for setting aside this Court's orders issued on 30th July 2024, allegedly dismissing the matter and closing the file. The 2nd, 4th, 5th and 8th Defendants contend that on the said date, the Court dismissed the Plaintiffs' application dated 24th July 2024 which was seeking to reinstate the suit, that had already been dismissed on 8th July 2024, with the file marked as closed. They argue that the suit having been dismissed on 8th July 2024, there was no suit capable of being dismissed on 30th July 2024, thus the application is incompetent for want of procedure.
18. The 2nd, 4th, 5th and 8th Defendants contend that the Plaintiffs are habitual absentees and that they failed to comply with Orders and directions of this Court. They claimed that the Plaintiffs have no locus standi to continue with this suit as Komarock Residents Association (K.R.A) whom they allegedly sue on behalf of, has new officials effective 4th August 2024. I note the Plaintiffs did not rebut these averments.
19. In *Mike Maina Kamau v Na-Yomie Construction Limited & Another; Sabaki Residents Association (Proposed Interested Party)* [2020] eKLR, the court stated that:

“Sabaki Residents Association can sue and be sued through its duly elected officials, notwithstanding that it is an incorporate body.”
20. The Plaintiffs further claim that they were absent in court on 30th July 2024, because they did not receive an SMS notification from the Judiciary, notifying them that the matter was slated for the said date.
21. On setting aside a judgment, Order 12 Rule 7 of the Civil Procedure Rules provides 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.”
22. In the case of *South Empire Traders v Nakuru Players Theatre Club* [2018] eKLR, the Court held that:

“The reinstatement of any application or suit that has been dismissed for non-attendance and/or for failure to prosecute ought not be considered to be automatic. Cogent reasons must be given for the non - attendance, for failure to attend court is a serious issue, and any person dialing to attend court must be ready to bear the consequences which may arise therefrom. No applicant should imagine that all he/she needs to do is file an application for reinstatement and that the same will be allowed as a matter of course and indeed, if courts adopt that stance, it will greatly prejudice the administration of justice for all that a person will need to do is fail to appear, and sit in the comfort zone, that he can always file an application for reinstatement which will be allowed. In this instance, I am afraid that I am not persuaded by the reasons tabled.” Emphasis Mine



23. The Court of Appeal stated as follows in *Manchester Outfitters Limited v Pravin Galot & 4 Others* [2020] eKLR;

“It is the combined responsibility of the parties, their advocates and the courts to ensure disputes are resolved in a more efficient and cost-effective manner. Parties and their counsel, but counsel, particularly being officers of the court, must never be seen to deliberately prolong the cases they have the conduct of indefinitely, by resorting to delaying tricks and tactics.”

24. From the facts before Court, since there are new officials of Komarock Residents Association, I find that the Plaintiffs have no locus standi to seek reinstatement of this suit as they are no longer officials. On the reasons canvassed by the Plaintiffs on their failure to attend Court, from the Court record, it is evident the Plaintiffs were not keen in proceeding with their matter. Further, they even failed to comply with Order 11 of the Civil Procedure Rules on pretrial directions and never attended Court to confirm compliance. Insofar as the Plaintiffs now seek to blame their Counsel on record, I opine that claims belong to parties and not Counsel.

25. In the foregoing, while relying on the legal provisions quoted and associating myself with the decisions cited, I find that the Plaintiffs have failed to demonstrate sufficient cause why this suit should be reinstated since the reasons advanced are not plausible.

26. In the circumstances, I find the instant Notice of Motion application dated the 14th August 2024, unmerited and will proceed to dismiss it but make no order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF JULY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ochieng for Applicant

Omulama for 2nd Defendant

Wangui Gichuki for 1st Defendant

Ms Majune for 7th Defendant

Ms Ithondeka for 1st Defendant

Court Assistant: Joan

