



Aveco Ltd v John Joseph Ndung'u Mwenja Partners Ltd & 2 others (Environment & Land Miscellaneous Case E131 of 2023) [2024] KEELC 6564 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E131 OF 2023**

**LN MBUGUA, J
OCTOBER 9, 2024**

BETWEEN

AVECO LTD PLAINTIFF

AND

JOHN JOSEPH NDUNG'U MWENJA PARTNERS LTD DEFENDANT

AND

SHAMJI KALYAN PINDORIA LIMITED RESPONDENT

AND

NAIROBI COUNTY GOVERNMENT DEFENDANT

RULING

1. Before me is the Applicant's Notice of Motion dated 6.7.2023 seeking orders for the reinstatement of the suit which was dismissed on 3.7.2024. The applicant contends that their advocate was ill, that is why they were absent on the date of 3.7.2024.
2. In opposition thereof, the 1st respondent has filed a replying affidavit through its director, one Harilal Shamji Kanji dated 2.10.2023 where they contend that no sufficient reasons have been advanced to warrant the issuance of the orders sought, adding that the matter was wrongly filed as there is a substantive appeal.
3. I have considered the issues raised herein. The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case, See Mwangi S. Kimenyi vs Attorney General and Another [2014] eKLR.
4. I find that this matter is fresh, and that the application was filed promptly after the dismissal of the suit. I would also not question the reasons given for none appearance, seeing that sickness is



unpredictable. The issue as to whether the suit is valid can only be raised when the said suit is active.
In the circumstances, the application dated 6.7.2023 is allowed but with costs to the 1st respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2024
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Odinga holding brief for M/s Muganda for the Plaintiff

Adongo holding brief for Mr. Ochid for 1st & 2nd Respondents Court Assistant: Joan

