



Francis v County Land Registrar & another (Environment & Land Case E011 of 2024) [2024] KEELC 6608 (KLR) (2 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6608 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E011 OF 2024
CK NZILI, J
OCTOBER 2, 2024**

BETWEEN

MARK GITONGA FRANCIS PLAINTIFF

AND

THE COUNTY LAND REGISTRAR 1ST DEFENDANT

THE COUNTY GOVERNMENT OF MERU 2ND DEFENDANT

RULING

1. Through an application dated 11.7.2024, the applicant is seeking inter alia; orders setting aside the orders made on 11.7.2024 and reinstatement of the application dated 26.6.2024. The grounds are that; the application was dismissed for non-attendance since the then-advocate was unable to join the virtual court proceedings due to internet downtime, only to log in when the matter had already been dismissed. The non-attendance was inadvertent and not by design or an attempt to obstruct justice. The applicant further avers that he has a meritorious case and stands to suffer loss.
2. The applicant also avers that he is willing to prosecute the suit, that the failure of a counsel should not be visited on an innocent party, and that the defendants shall not suffer any prejudice.
3. Despite a return of service on record, the application is not opposed.
4. Order 12 Rule 7 of the *Civil Procedure Rules* grants the court discretion of setting aside, recalling and or reinstating a suit or application dismissed for non-prosecution or non-attendance. In *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015 eKLR, the court held that the tests to apply in an application for reinstatement are whether there are reasonable grounds to reinstate, the prejudice that the defendant would suffer as a result of the reinstatement and the prejudice the plaintiff would suffer if the suit is not reinstated.



5. Looking at the application, the applicant has not explained how and when the former counsel on record lost internet connectivity or if he had logged in to the virtual court proceedings according to the virtual court practice directions, requiring parties and advocates to be logged in at least fifteen minutes before the court session begins. Be that as it may, it is not lost this court that there has been an intermittent internet downtime, affecting virtual proceedings from time to time.
6. In *Belinda Murai & 9 others v Amos Wainaina* [1961] EA 679, the held mistakes of a legal adviser may amount to sufficient cause. In [*Sophia Chemasigen Kachuwai & Another v Union of Kenya Civil Servant & 2 Others*](#) [2021] eKLR, counsel joined the virtual court at 8:45 a.m.
7. Upon the matter being called out, the network collapsed, and he was subsequently logged out. When he logged back, his matter had already been dealt with. It was held that sufficient reasons ought to have been provided with backup evidence showing an unstable internet network.
8. This application is not opposed and therefore, the respondents have not stated how they are likely to be prejudiced if the orders sought are granted. Further, guided by [*Lochab Bros Ltd v Peter Karuma T/A Lumumba Lumumba Advocates*](#) [2003] eKLR, Articles 48 and 50 of the [*Constitution*](#) guarantee every Kenyan the right to access justice and a fair hearing. Article 159 thereof requires that justice shall be administered without undue regard to technicalities, whereas Sections 3, 4, and 13 of the [*Environment and Land Court Act*](#), as read together with Sections 1A, 1B, and 3A of the [*Civil Procedure Act*](#), call for substantive justice.
9. Considering the merits of the case and the interest of justice, the court is inclined to set aside the said orders and reinstate the application dated 26.6.2024 for a hearing.
10. Costs in the cause.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 2ND DAY OF OCTOBER, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

No appearance

