



**Wako v Guled & 7 others (Environment & Land Case 52 of 2019)
[2024] KEELC 6776 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6776 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 52 OF 2019
FM NJOROGE, J
OCTOBER 16, 2024**

BETWEEN

ADAM ISAAK WAKO PLAINTIFF

AND

ABDUL GULED & 7 OTHERS & 7 OTHERS & 7 OTHERS DEFENDANT

RULING

1. The Notice of Motion for determination is dated 21/6/2024 brought under Section 1A, 1B & 3A of the Civil Procedure Act, Order 12 Rule (7) of the Civil Procedure Rules 2010. The Applicant seeks the following orders:
 1. Spent;
 2. That the Honourable Court be pleased to set aside orders made on 20th May, 2024 dismissing the Applicant's suit for non-attendance.
 3. That the Honourable Court be pleased to reinstate the suit.
 4. That the costs of this application be provided for.
2. The application is supported by the affidavit of Kipkurui Ng'eno Birir and is premised on the following grounds:
 1. That on 20th May, 2024 the Honourable Court dismissed the Applicant's suit for non-attendance.
 2. That on the said date, Counsel for the applicant linked himself to the court session through Microsoft Teams but because of the network challenge, the Learned Judge could not hear him.
 3. That the Applicant's Counsel reasonably believes that the reason the Learned Judge could not hear him was due to technical issues beyond his control.



4. That the technical issues in the online session led to the Judge believe that he was not in attendance of the said session and it led him to issue an order dismissing the Applicant's suit for non-attendance.
 5. That the dismissal order is prejudicial for the reason that the Applicant's Counsel duly logged in the Teams session on 20th May. 2024 but had a challenge with the network and he only heard that the suit had been dismissed.
 6. That the Applicant's Counsel remained in the platform hopping to get a chance but did not. The recordings of the day bear him record that he was in.
 7. That the orders issued on the said day are extremely prejudicial to the Applicant who will suffer irreparable loss if the suit is not reinstated and a just determination on merit made and he will suffer at the mistake of the Advocate.
 8. That it is in the interest of justice that the suit be reinstated.
3. The application before me is unopposed. I have considered the grounds advanced by the applicant for the proposed reinstatement of the suit and I am persuaded that they are sound. Consequently, I allow the said application as sought in prayers no 2 and 3 thereof. The costs of the application shall be in the cause.
 4. To expedite the finalization of the suit the parties shall adopt the following course of action without fail:
 - a. The plaintiff shall, if he has not done so already, file and serve all further lists and bundle of documents and lists of witness and witness statements as he may wish to file within 14 days from the date of this order;
 - b. The defendants shall respond to the filing and service above, their lists and bundle of documents and lists of witness and witness statements as he may wish to file within 14 days from the date of service or shall in any event file and serve such documents within 14 days of the expiry of the period granted to the plaintiff in (a) above;
 - c. The suit shall be mentioned on 21/11/2024 and all parties shall attend court for the purpose of issuing it with a hearing date.

RULING DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 16TH DAY OF OCTOBER 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI

