



**Muoka v Omenke & another (Environment & Land Case
E005 of 2023) [2023] KEELC 16416 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16416 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E005 OF 2023
EK WABWOTO, J
MARCH 9, 2023**

BETWEEN

SAMUEL MUINDI MUOKA PLAINTIFF

AND

GEOFFREY LORE OMENKE 1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 2ND DEFENDANT

RULING

1. Before me for determination is the plaintiff's application dated February 9, 2023, which was accompanied by supporting affidavit sworn by Job Odhiambo Ochieng Advocate. The plaintiff sought the following orders:
 - i. ...Spent.
 - ii. That this Court be pleased to order stay of proceedings and set aside all consequential orders of February 7, 2023 pending hearing and determination of this Application.
 - iii. That this honourable court be pleased to set aside, review its orders of February 7, 2023 and all consequential orders made.
 - iv. That this honourable court do reinstate the application dated December 21, 2022 and make orders allowing the application to be heard on merits for purposes of fair trial and just determination of the real issues in dispute herein.
 - v. That costs of this application be in the cause.
2. In submissions dated February 13, 2023, the plaintiff submitted that a technical hitch had restricted the Plaintiff's advocate from joining court in time to participate in the court's virtual/online proceedings. Relying on the cases of *Belinda Murai & others v Amos Wainoni* [1979] eKLR and *Philip Chemwolo*



Et another v Augustine Kubede [1986] eKLR, it was submitted that this should be considered an honest mistake that could happen to anyone and should not negatively impact his client's right to fair hearing and trial. It was reiterated that internet connectivity in rural areas is often limited.

3. The application was not opposed despite being served upon the defendants.
4. Having perused the written submissions, court proceedings and supporting documents, it is evident that the issue for determination before this court is whether the application dated February 9, 2023 is merited?
5. Order 12 rule 7 of the *Civil Procedure Rules* provides for setting aside, recalling and/or reinstating a suit or application dismissed for non-prosecution or non-attendance.
6. Articles 48 and 50 of the *Constitution* guarantees every Kenyan a right to access to justice and fair hearing. Article 159 (2) d 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 section 1A, 1B and 3A of the *Civil Procedure Act* expects the court to strive towards substantive justice.
7. In the case of *Gladys Njeri Kirugumi v Langata Development Co Ltd Et another* [2016] eKLR and *Films Rover International Ltd v Cannon Film Sales Ltd* [1986] 3 All ER 772 the court in determining reinstatement of an application considered the least risk of injustice. In this instance, I have considered that the application for reinstatement was filed two days after dismissal for non-attendance, which is undoubtedly a timely move by the plaintiff. Moreover the application for reinstatement was unopposed.
8. Bearing this in mind, the route of lesser risk of injustice is to allow the application and reduce any prejudice occasioned by denial of a chance to prosecute the application.
9. In view of the foregoing, the court finds that the application dated February 9, 2023 is merited and proceeds to reinstate the plaintiff's application dated December 21, 2022 with an order that each party to bear own costs.
10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MARCH, 2023.

EK WABWOTO

JUDGE

In the presence of: -

N/A for the Plaintiff.

N/A for the Defendants.

Court Assistant; Caroline Nafuna.

