



**Mpungu v Kimiyu & another (Environment & Land Case  
378 of 2019) [2023] KEELC 16054 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16054 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 378 OF 2019  
EK WABWOTO, J  
MARCH 1, 2023**

**BETWEEN**

**ANDREW MWITI MPUNGU ..... PLAINTIFF**

**AND**

**HARON KIMIYU ..... 1<sup>ST</sup> DEFENDANT**

**PAULINE MUSYIMI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me for determination is an application dated October 4, 2022. The application was supported by the supporting affidavit sworn by Sharon A Auma of even date.
2. In the said application, the plaintiff sought the following orders:
  - i. ...spent.
  - ii. That this honourable court be pleased to reinstate the plaintiff's application dated May 24, 2022.
  - iii. That costs of this suit be provided for.
3. In submissions dated February 21, 2023, the defendants while opposing the application, submitted that the application has come up for hearing thrice before and the plaintiff failed to appear in court. Taking this into account, the alleged technological hitches were no excuse for the previous occasions. Relying on the cases of *John Nabashon Mwangi v Kenya Finance Bank Limited (in liquidation)* [2015] eKLR and *Sophia Chemasigen Kachuwai & another v Union of Kenya Civil Servants & 2 others* [2021] eKLR, it was asserted that sufficient reason should be provided.
4. The plaintiff filed submissions dated February 21, 2023 where it was argued that the reasons for non-attendance were out of their control and unintentional. Furthermore, the application was necessary



since the plaintiff was completely alienated from the suit premises. Relying on the case of *Mutinda Musila Malua v Nguga Yatta Deputy County Commissioner Kitui West Sub-county & 2 others* [2021] eKLR it was argued that the court had reinstated a petition based on a sign of the petitioner's efforts in reaching out to the court at the earliest possible opportunity.

5. 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 October 4, 2022 is merited.
6. Order 12 rule 7 of the *Civil Procedure Rules* provides inter alia on recalling and or reinstating a suit or application dismissed for non-prosecution or non-attendance.
7. Articles 48 and 50 of the *Constitution* guarantees every Kenyan a right to access to justice and fair hearing. Article 159 (d) of the *Constitution* 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* expects the court to strive towards administering substantive justice.
8. In the case of *Gladys Njeri Kirugumi v Langata Development Co Ltd & 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.
9. In the instant case, I have considered the fact that the application was brought in a timely manner therefore the route of lesser risk of injustice is to allow the application otherwise the applicant would be more prejudiced if denied a chance to prosecute the same.
7. In conclusion, the court finds that the application dated October 4, 2022 is merited and hereby reinstates the application dated May 24, 2022 with an order that each party to bear own costs.
8. A date for the hearing of the said application dated May 24, 2022 shall be fixed immediately after the delivery of this ruling.
7. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF MARCH 2023**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**Ms. Auma for the Plaintiff/Applicant.**

**Ms. Odongo for the Defendants/Respondents.**

**Court Assistant; Caroline Nafuna.**

**E. K. WABWOTO**

**JUDGE**

