



**Siro & 4 others (Suing on Their Own Behalf and on Behalf of listed Members of Adhoch Clan) v Okuna & 5 others (Environment and Land Appeal 30 of 2022) [2023] KEELC 21391 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21391 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND APPEAL 30 OF 2022  
AY KOROSS, J  
NOVEMBER 9, 2023**

**BETWEEN**

**GEORGE NDONG'A SIRO ..... 1<sup>ST</sup> APPELLANT  
BENSON OKETCH SIRO ..... 2<sup>ND</sup> APPELLANT  
WILFRED NYASEDA SIRO ..... 3<sup>RD</sup> APPELLANT  
ERNEST NYATIGI SIRO ..... 4<sup>TH</sup> APPELLANT  
ROSE ATIENO ..... 5<sup>TH</sup> APPELLANT  
SUING ON THEIR OWN BEHALF AND ON BEHALF OF LISTED MEMBERS  
OF ADHOCH CLAN**

**AND**

**PETER OUMA OKUNA ..... 1<sup>ST</sup> RESPONDENT  
EDWIN OLALORWA ..... 2<sup>ND</sup> RESPONDENT  
DONAL ODEMBO ORWA ..... 3<sup>RD</sup> RESPONDENT  
GEORGE NYAPEDHO ORWA ..... 4<sup>TH</sup> RESPONDENT  
AGRIPER ABIDHA ORWA ..... 5<sup>TH</sup> RESPONDENT  
THE REGISTRAR OF LANDS BONDO ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The notice of motion filed by the appellants dated 02/05/2023 that is the subject for determination is brought pursuant to the provisions of Order 12 Rule 7 of the [Civil Procedure Rules](#). They sought the following reliefs:



- a. That the honourable court be pleased to review/vary and set aside its order given on 02/05/2023 which dismissed the application dated 12/04/2023 for non-attendance.
  - b. That this honourable court do invoke its inherent power in the interest of substantive justice and reinstate the application dated 12/04/2023.
  - c. Costs of the motion be in the cause.
2. The motion is premised on the grounds set out on its face and on the supporting affidavit of the appellants' counsel on record M/s. Judith Adhiambo Owenga deposed on the instant date.
  3. Counsel contended that when the application dated 12/04/2023 was slated for hearing, she encountered a technical hitch and was unable to join the virtual court session and when she eventually joined the session at 09:19 am, she found the application had been dismissed.
  4. Counsel contended her action was excusable and it would be in the interests of justice if the motion was allowed. Further, she asserted no prejudice would be occasioned to any of the parties. The motion was unopposed and despite directions on disposing of it by written submissions, none was filed.
  5. I have carefully considered the motion, grounds in support and affidavit and the only issue falling for determination is whether the appellants have proffered sufficient reasons to warrant the grant of the orders sought.
  6. Although the appellants have sought for an order for review, the grounds and affidavit do not advance such a prayer. In fact, the motion has not been moved pursuant to the relevant provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*.
  7. My understanding of this is the appellants are only keen to set aside or vary the order dismissing their application dated 12/04/2023. It is on this basis my invitation to intervene is moved pursuant to Order 12 Rule 7 of the *Civil Procedure Rules*. When faced with such an application, the court exercises its judicious discretion and an applicant has to tender sufficient cause.
  8. The persuasive decision of *Wachira Karani v Bildad Wachira* [2016] eKLR defined sufficient cause as;
 

“Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application. Thus, the defendant must demonstrate that he was prevented from attending court by a sufficient cause.
  9. The guiding principles for exercise of discretion were well stated by the Court of Appeal decision of *Simon Thuo Mwangi v Unga Feeds Limited* [2015] eKLR as thus:-
 

“On reasons presented, it takes course to set aside or refuse to set aside. The court thus exercises a judicial discretion all the time having in mind what is just and fair in the case. The reason to set aside must therefore be based on good grounds or reasons advanced not on a whim or caprice.”
  10. Notwithstanding the provisions of Sections 1A and 1B of the *Civil Procedure Act* call on this court to determine disputes in a just manner, by the same thread, the proviso requires court business to be expedited. By these provisions, the overriding objective is aimed at giving justice to all parties who will be affected by the outcome of a case.



11. In postulating efficiency of virtual court sessions, the Practice Directions on standardization of Practice & Procedures in the High Court 2021 gave effect to Article 159 (2)(b) of the Constitution and Sections 1A and 1B of the Civil Procedure Act. By practice direction no. 30 (b) thereof, advocates are required to virtually connect to court sessions 15 minutes prior to the stipulated sessions which in the circumstances of this case, by 08:45am.
12. My understanding of this 15 minute allowance is to allow counsels and litigants to adequately prepare for virtual court sessions so that when the court commences its sessions, all litigants and counsels are adequately prepared. This enables the court to fulfil its overriding objective of expeditious disposal of cases.
13. In such preparations, counsels and litigants are ordinarily expected to ensure they have reliable internet connection, know the court's appropriate virtual link and have an appropriate virtual software application that aligns to the court's virtual link.
14. In the circumstances of this case, it is obvious counsel did not adhere to this direction. I say so for the reason that counsel asserted she joined the virtual session at 9:19am which was way after her matter had already been dismissed for want of attendance. Her argument that she had challenges with her Teams App software does not hold water since by the said practice directions, she should have resolved such a challenge by 08:45 am. It is for this reason that I find counsel has not tendered sufficient cause.
15. This court has also taken note the appellants and their counsel have been guilty of delay and frustrated the expeditious disposal of this case. Counsel never attended court on various occasions and this culminated to the appeal being dismissed for want of attendance and compliance on 18/01/2023.
16. This dismissal triggered counsel to file the application dated 12/04/2023 in which she sought for the orders issued on 18/01/2023 to be set aside. When this particular application was set down for hearing on 02/05/2023, one would have expected that given the reinstatement of the appeal or otherwise was at stake, neither counsel nor the appellants presented themselves to court and in the usual fashion, they were both a no show.
17. Utmost, I find the motion not merited. I hereby dismiss the motion dated 02/05/2023 for want of sufficient grounds to warrant a variation and or setting aside of the orders issued by this court on 02/05/2023. There shall be no orders as to costs.

**DELIVERED AND DATED AT SIAYA THIS 9<sup>TH</sup> DAY OF NOVEMBER 2023.**

**HON. A. Y. KOROSS**

**JUDGE**

**09/11/2023**

Ruling delivered virtually through Microsoft Teams Video

Conferencing Platform in the Presence of:

Miss Owenga for the appellants

N/A for the respondents

Court assistant: Ishmael Orwa

