



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kawere Connections Company Limited & 2 others v Opet (Civil Miscellaneous
E008 of 2025) [2025] KEHC 5793 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5793 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL MISCELLANEOUS E008 OF 2025**

JK SERGON, J

MAY 8, 2025

BETWEEN

KAWERE CONNECTIONS COMPANY LIMITED 1ST APPLICANT

RENGCOM COMMUNICATION 2ND APPLICANT

ROBERT ANGULU ANYANGU 3RD APPLICANT

AND

JULIET ATIENO OPET RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 13th March, 2025 seeking the following orders;
 - (i) Spent
 - (ii) That this Honourable Court be pleased to grant an interim order of stay of execution of the Judgment and/or decree plus costs and interest in Kericho CMCC No. 33 of 2019 pending the hearing and determination of this application inter-parties.
 - (iii) That this Honourable Court be pleased to set aside the proceedings of 12th March, 2025 and all the consequential orders.
 - (iv) That the Application dated 27th January 2025 be reinstated and the same be set down for inter parte hearing.
 - (v) That cost of this Application abide the outcome of the Appeal
2. The application is supported by the grounds on the face of it and the supporting affidavit of Lydia Ongwacho an Advocate of the High Court of Kenya practicing as such in the firm name and style



- of M/S Kairu & Mccourt Advocates and having the conduct of this matter for and on behalf of the Applicants hence competent and duly authorized to swear the affidavit.
3. She avers that the Application dated 27th January, 2025 came up for inter-partes hearing on 12th March, 2025 and that she logged in virtually and waited for court to begin its virtual session as she was ready to proceed.
 4. She avers that after addressing court in Kericho HMISC number 4 of 2025 a matter that was preceding the instant application, she had some network issues due to power outage in their offices and as such was not at a position to address the court when the matter was called, she attached a copy of the cause list.
 5. She avers that upon inquiring as to whether the matter had been dealt with from the Court assistant, he indicated that the matter had not been dealt with and that they should send someone to hold brief as the court had proceeded to open court. The court assistant further communicated that the court had proceeded to open court and that it was not going to resume virtual sessions.
 6. She avers that she called the court assistant to confirm directions taken and he indicated that the matter was called during the virtual sessions and nobody responded and as such the application was dismissed for want of prosecution which position was equally confirmed from the judiciary kiosk.
 7. She avers that the non-attendance was not intentional as the power outage was beyond her control and the communication to appear in court physically was received late.
 8. She reiterated that on the material day, she was appearing virtually and due to power outage in court was unable to attend to this matter.
 9. She avers that the instant application has been filed without delay.
 10. She avers that the Applicants are desirous to prosecute the Application dated 27th January, 2025 and that therefore it is in the interests of justice that the Applicants' Application be reinstated, all orders made on 12th March 2025 be set aside, and Orders of stay of execution granted, as the respondent might commence execution anytime in respect of the judgment in Kericho CMCC No. 33 of 2019 there being no orders of Stay of execution and that in the premise it is only fair that this application be allowed.
 11. The matter came up for inter partes hearing, the learned counsel for the stated applicant stated that they served the application upon the respondent, however, there was no response on the part of the respondent. There was no representation on the part of the respondent.
 12. Having considered the pleadings by the parties this court finds that the issue (s) for determination are whether to set aside the proceedings of 12th March, 2025 and all the consequential orders and reinstate the application dated 27th January, 2025 and the same be set down for inter parte hearing. The applicant has offered a plausible explanation for non attendance on the material day when the application dated 27th January, 2025 came up for inter partes hearing. This court finds that the non-attendance was not intentional as the power outage was beyond her control and the communication to appear in court physically was received late.
 13. The relevant position of the law is Order 12 Rule 7 of the Civil Procedure Rules under which the Application is brought which provides: "Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just". In the case of *John Nabashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR (Gikonyo J) stated as follows: "The fundamental principles of justice are enshrined in the entire Constitution and specifically in article 159 of *the Constitution*. Article



50 coupled with article 159 of the Constitution on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such a matter of reinstatement of a suit which has been dismissed by the court. These principles were enunciated in a masterly fashion by courts in a legion of decisions which I need not multiply except to state that; courts should sparingly dismiss suits for want of prosecution for dismissal is a draconian act which drives away the plaintiff in an arbitrary manner from the seat of judgment. Such acts are comparable only to the proverbial “sword of the damocles” which should only draw blood where it is absolutely necessary. The same test will apply in an application to reinstate a suit and a court of law should consider whether there are reasonable grounds to reinstate such a suit-of course after considering the prejudice that the defendant would suffer if the suit was reinstated against the prejudice the plaintiff will suffer if the suit is not reinstated.”

14. In light of the foregoing, the notice of motion dated 13th March, 2025 is hereby allowed in its entirety. The Application dated 27/1/2025 is fixed for inter-partes hearing on 31/7/2025.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH
DAY OF MAY, 2025.**

.....

J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Ongwacho for the Applicants

Miss Orina for the Respondent

