



Alinyo v Kenya Railways Corporation & another (Environment & Land Miscellaneous Case E001 of 2024) [2025] KEELC 3835 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E001 OF 2024**

E ASATI, J

MAY 15, 2025

BETWEEN

DAVID OTIENO ALINYO PLAINTIFF

AND

KENYA RAILWAYS CORPORATION 1ST DEFENDANT

COUNTY GOVERNMENT OF VIHIGA 2ND DEFENDANT

RULING

1. This Ruling is in respect of the plaintiff's application dated 23rd January 2025 brought pursuant to the provisions of Order 51 Rule 1 *Civil Procedure Rules* and sections 3 and 3A of the *Civil Procedure Act*. The substantive prayer sought in the application is that the suit be reinstated.
2. The application is supported by the averments in the Supporting Affidavit sworn by Peter Odhiambo Othim Advocate on 23rd January 2025.
3. The application was opposed by the 1st Respondent vide the grounds contained in the Replying Affidavit sworn by Stanley Gitari a Principal Legal Officer of the 1st Defendant/Respondent.
4. The application was argued by way of written submissions. It was submitted on behalf of the applicant vide the written submissions dated 19th February 2025 that the advocate handling the matter inadvertently failed to diarize the matter for the hearing of 14th November 2024. That the suit be heard and determined as the cause of action is ongoing and the issues are yet to be resolved. That the application was brought without delay.
5. As narrated by the 1st Respondent in its Replying Affidavit since, ruling was delivered on 8/2/2024 in the matter, neither the plaintiff nor his Counsel attended court on the numerous times that the matter came up for mention for pre-trial. This includes on 14/3/2024(which date was taken in the presence of Counsel for the plaintiff), on 11/4/2024 9/5/2024 and 10/6/2024.



6. When the matter first came up for hearing on 18/9/2024, Counsel for the plaintiff attended court but prayed for adjournment on grounds that his client was unwell. The court took into account the fact that the plaintiff was said to be sick and granted adjournment in spite of opposition by the defendants who were ready to proceed. Hearing was rescheduled to 14/11/2024 by consent. On 14/11/2024 both the Plaintiff and his Counsel were absent.
7. Since the date had been given in the presence of Counsel for the plaintiff and as Counsel for the 1st defendant applied that the suit be dismissed, court proceeded to dismiss the suit for non- attendance under O.12 Rule 3(1) *Civil procedure Rules 2010* and awarded costs to the defendants.
8. I have considered the present application and the grounds advanced in opposition thereof. The discretion given to this court by Order 12 Rule 7 to set aside, or vary orders or to reinstate a suit that had been dismissed for non-attendance or for want of prosecution must be exercised judiciously and for the interest of justice of both parties. The history of the matter is that the plaintiff had not been attending court as and when the matter came up. Counsel has not given reason why he did not diarize the matter yet he was present in court and took the date by consent.
9. The grounds for setting aside the dismissal order have not been demonstrated. The application is dismissed. No order as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA AND READ VIRTUALLY THIS 15TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Odhambo Othim for the Plaintiff/applicant.

Biwott h/b for Too for the 1st Defendant/Respondent.

Biwott h/b for Shijenje for the 2nd Defendant/Respondent.

