



**Okeno & Sons Building Contractors v Principal Secretary Ministry of Agriculture, Livestock & Fisheries & another (Judicial Review E010 of 2022) [2024] KEHC 5530 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5530 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E010 OF 2022  
KW KIARIE, J  
MAY 22, 2024**

**BETWEEN**

**OKENO & SONS BUILDING CONTRACTORS ..... APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK & FISHERIES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant moved the court through a Notice of Motion dated the 8<sup>th</sup> day of February 2024. The applicant is seeking the following orders:
  - a. This application be certified urgent and be heard ex parte in the first instance and orders granted.
  - b. The honourable court would be pleased to review, vary, and/or set aside its orders made on 7 February 2024, dismissing the applicant's application dated 11 December 2023 for non-attendance.
  - c. The application dated 11<sup>th</sup> December 2023 be reinstated as filed for hearing and subsequent determination by this honourable court on its merit.
  - d. Costs of this application be provided for.
2. The application is premised on the following grounds:



- a. This application seeks to review, vary and/or set aside the court orders issued on 7<sup>th</sup> February 2024 dismissing the application dated 11<sup>th</sup> December 2023 and consequently substitute the said order with an order for reinstatement.
  - b. The applicant sought to change his advocate on record after judgment and filed the subject application dated 11 December 2023 on 16 January 2024 after it took considerable time to map the application for filing.
  - c. Upon applying, the applicant kept checking on the CTS portal for feedback but did not receive it until 8<sup>th</sup> February 2024, when the applicants' advocates were able to access the portal only to learn that the subject application was certified urgent and fixed for hearing on 7<sup>th</sup> February 2024, when the same was dismissed for want of prosecution due to the absence of the applicant's advocate.
  - d. The applicant's advocates were unaware of the hearing on 7<sup>th</sup> February 2024 and did not receive any notice. The advocates' non-attendance was innocent and excusable, as it was due to their lack of knowledge of the hearing date, and the applicant should not be punished for it.
  - e. The applicant urgently needs to replace the current advocates on record and prosecute this matter to its logical conclusion. It would only be just and fair that the application herein be allowed so that the applicant can exercise its constitutional right of fair hearing and right to a fair trial.
  - f. The applicant is apprehensive that unless this court exercises its discretion and orders reinstatement of the suit, it will suffer great injustice for reasons beyond its control.
  - g. The non-attendance of 7<sup>th</sup> February 2024 was not intentional and was solely out of lack of information that the matter was scheduled to proceed for hearing on the said date. The dismissal order only came to the applicant's advocate's knowledge on perusal of the online Judiciary e-filing system on 8<sup>th</sup> February 2024.
  - h. The applicant has always been steadfast in prosecuting the suit, save for failing to attend court on February 7, 2024, which was beyond the control of the applicant's advocate.
  - i. The applicant is keen on prosecuting the dismissed application, which only seeks this honourable court's leave to allow the firm of Prof. Albert Mumma & Company advocates – its current advocates to come on record in place of the firm of C. Obiero & associates advocates. It will serve the interest of justice if the erstwhile dismissed application is reinstated for herein on its merit.
  - j. It would be unfair to punish and prejudice the applicant for misfortunes beyond its control by locking it out of the seat of justice. The respondents have not suffered any inconveniences, and none will be suffered if the application is reinstated.
  - k. It is only fair just in the circumstances and in the interest of justice that the said orders issued by this honourable court on 7<sup>th</sup> February 2024 ought to be reviewed, varied and/or set aside, and the application as was filed herein be reinstated for hearing and determination on merit.
3. The application was opposed on the following grounds:
- a. That the applicant advocate, firm of prof Muma & Co. Advocate, has no rights of the audience for failure to comply with Order 9 Rule 9 of the [Civil Procedure Rules](#).



- b. No evidence has been presented in email conversations, texts, or calls to attempt to seek out the portal issues alleged; the same is true of empty allegations that have been misdirected to hoodwink the court.
  - c. The applicant does not meet any of the grounds for review sought; they can opt to appeal the court's decision.
  - d. The applicant is in contempt of court, did not comply with the court's direction, and does not merit an audience.
  - e. The advocate shall move the court to strike out the application with costs.
4. Order 9 Rule 9 of the [Civil Procedure Rules](#) provides:

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person, as the case may be.

The applicant's reinstatement application is to comply with the Order 9 Rule 9 of Civil Procedure Rules. It is incorrect to state that it has been breached.

5. I have considered the reasons for non-attendance when the application dated 11<sup>th</sup> December 2023 was dismissed. I have also considered grounds of opposition. My opinion is that the application is merited, and I therefore allow it. Costs shall be in the cause.

**DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF MAY 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

