



Calistus and Company Advocates v Oruku (Environment and Land Miscellaneous Application E023 of 2023) [2025] KEELC 6203 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2023
NA MATHEKA, J
SEPTEMBER 23, 2025**

BETWEEN

CALISTUS AND COMPANY ADVOCATES ADVOCATE

AND

NICODEMUS MOKAYA ORUKU CLIENT

RULING

1. The application is dated 20th January 2025 and is brought under Section 1A, 1B, 3 and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 and 15 of the Civil Procedure Rules 2010, Article 159 (1) (2) of *the Constitution* of Kenya 2010 seeking the following orders;
 1. That this Honourable Court be pleased to set aside, and/or vary its orders issued on 4th December, 2024 dismissing and/or striking out the Applicant’s Application herein dated 23rd October, 2024, for non-attendance.
 2. That this Honourable Court be pleased to reinstate the Applicant’s Application herein on record dated 23rd October, 2024, and the same be set down for hearing and final determination on merit at an earliest date.
 3. That the Honourable Court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.
 4. That the costs of this Application be provided for.
2. It is supported by the annexed Affidavit of James Odhiambo Nyengeny and on the following other grounds that the Applicant herein filed an Advocates Client Bill of Costs against the Respondent herein which Bill was taxed at Kenya shillings seven hundred and forty-three thousand, two hundred and ninety-nine only (Kshs. 743,299/=) on 14th August, 2024 and which Ruling is dated 14th August, 2024.



3. That despite the said Ruling being delivered, and the same being duly served to the Respondent, the said Respondent has since refused and/or declined to settle the Taxation amount herein despite several requests for him to comply. That with the forgoing, the Applicant moved the Honourable Court herein on 23rd October, 2024 seeking that Judgment be entered against the Respondent as prayed, and a Decree do issue for the taxed amount of Kenya shillings seven hundred and forty-three thousand, two hundred and ninety-nine only (Kshs. 743,299/=) together with costs of the said Application dated 23rd October, 2024. That the said Application dated 23rd October, 2024 was set down for mention for further directions on 4th December,2024. That on the said date, when the matter was called out, and the Applicant's counsel moved the court, but the court noted that the said Application, among other documents were not in the court file, and the file was placed aside until 12pm for the court to trace the said documents from the registry. That at the set 12pm, the Applicant logged in court and unfortunately, when the Applicant's matter was called out, the Applicant's Advocates experienced a power outage and as a result his network connection was disconnected and/or failed, resulting in his inability to address the court. That by the time the Applicant returned online the matter had been mentioned and the court had concluded its virtual session. That later, upon perusing the court file, the Applicant discovered that the court had dismissed the Application dated 23rd October,2024 for non-attendance. That the Applicant herein through its letter dated 13th December, 2024, supplied the court with the documents that the court had noted were missing from the court file. That the failure to prosecute this matter on 4th December, 2024 was not deliberate but rather caused by the circumstances beyond the control of the Applicant and their Advocates. That further, the Applicant herein is determined to prosecute this matter to its fair and just conclusion, which can only happen through this court allowing the Application herein. That the Applicant has walked a long journey in prosecuting this matter, and the same is now in its final stage of issuing a Decree. That the Applicant has an arguable case and will be prejudiced in the event the Application herein is not reinstated. That it is only fair and just that this Honourable Court intervenes in order to protect the rights of the Applicant to access justice by allowing the Application herein, and fixing a date for the Application to be heard. That a greater injustice will be occasioned to the Applicant if its Application on record is not reinstated. That the Application herein has been brought in good faith and without undue delay.
4. This court has considered the application and supporting affidavit. The Respondent was served but has not filed any response. I have perused the proceedings of 4th December, 2024 before Hon Otindo Deputy Registrar which were held at 11.06am on the material day and I do not see any order dismissing the said application dated 23rd October,2024, for non-attendance. In any event if there was such an order then the correct forum would be before the Deputy Registrar and not before this court. I find this application is unmerited and is dismissed with no orders as to costs as it is undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 23RD DAY OF SEPTEMBER 2025.

N.A. MATHEKA

JUDGE

