



**Nabutola (Suing as Legal Representative of the Estate of Wekesa
Malesi Maina) v Wekesa & 2 others (Land Case (Originating Summons)
E028 of 2024) [2025] KEELC 6300 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6300 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
LAND CASE (ORIGINATING SUMMONS) E028 OF 2024
EC CHERONO, J
SEPTEMBER 18, 2025**

BETWEEN

**HENRY WANYONYI NABUTOLA (SUING AS LEGAL REPRESENTATIVE OF
THE ESTATE OF WEKESA MALESI MAINA) PLAINTIFF**

AND

BENSON WAFULA WEKESA 1ST DEFENDANT

WILLIAM WEKESA KHAEMBA 2ND DEFENDANT

JAMIN WANGILA WEKESA 3RD DEFENDANT

RULING

1. Before me for determination is the Plaintiff/Applicant's Notice of Motion application dated 12th March 2025 seeking the following orders;
 1. (Spent)
 2. That the dismissal order made herein on the 11th day of March, 2025 dismissing the Applicant's suit for want of prosecution be set aside and/or varied.
 3. That the suit herein be reinstated and be set down for hearing on merit.
 4. That the costs of this application be in the cause.
2. The application is premised on grounds that when this suit came up for directions on 11th March 2025, the Applicant's Counsel was unable to join the proceedings virtually due to internet downfall network. The Applicant further averred that the said inadvertence on the part of counsel should not be visited upon the Applicant since the dismissal was due to technicalities of network problem hence, he should be granted a chance to prosecute the suit on merits. He stated that he is interested and



desirous of prosecuting the suit and that the delay to attend court on the part of his Counsel was not intentional but caused by factors beyond his control. He argued that the application has been brought without undue delay. These averments apparent on the face of the application are replicated in the supporting affidavit of Henry Wanyonyi Nabutola, the Applicant herein sworn on even date. What the Applicant has stated in his supporting affidavit is that the suit herein was dismissed on 11th March 2025 for failure by his Advocate to attend court owing to his inability to join proceedings virtually due to network downfall. However, he did not indicate the source of his information as required in law. The Applicant's Advocate in his certificate urgency merely stated that he was unable to join court proceedings virtually on 11th March, 2025 due to internet downfall. These averments have not been stated under oath. The learned Counsel ought to have stated on oath for it to have evidentiary value.

3. Having carefully considered the application, the certificate of urgency and supporting affidavit, I am satisfied by the explanation of the Applicant that his Counsel was unable to attend court proceedings leading to the dismissal of this suit for want of prosecution on 11th March 2025. I also find that failure by Counsel for the Applicant to swear a supplementary affidavit or for the Applicant to disclose the source of information in his supporting affidavit are procedural technicalities which are curable under Article 159 of the *Constitution* of Kenya 2010. The upshot of my finding is that the explanation for failure by Counsel for the Applicant to attend court virtually on the said 11th March 2025 is excusable. In the interest of justice, I allow the said application dated 12th March 2025 as follows;
 1. The order made on 11th March, 2025 dismissing the suit herein for want of prosecution be and is hereby set aside/vacated.
 2. This suit be and is hereby reinstated forthwith.
 3. That the costs of this application shall be costs in the cause.

READ, DATED AND SIGNED AT BUNGOMA THIS 18TH DAY OF SEPTEMBER, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

Applicant/Advocate-absent.

Respondent/Advocate-absent.

Bett C/A.

