



REPUBLIC OF KENYA



**Lutta v Mumias Sugar Co. Ltd (Cause 293 of 2015)  
[2025] KEELRC 2746 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2746 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 293 OF 2015  
JK GAKERI, J  
OCTOBER 9, 2025**

**BETWEEN**

**PAMELA NELIMA LUTTA ..... CLAIMANT**

**AND**

**MUMIAS SUGAR CO. LTD ..... RESPONDENT**

**RULING**

1. Before the court for determination is the applicant's Notice of Motion dated 25<sup>th</sup> July, 2025 filed under Certificate of Urgency seeking Orders that:
  1. Spent
  2. Spent.
  3. The court do reinstate the Notice of Motion Application dated 3<sup>rd</sup> July, 2025.
  4. Costs be in the cause.
2. The Notion of Motion is expressed under the inherent powers of the court and is grounded on the reasons set out on its face and the Supporting Affidavit of Winnie Songok sworn on 25<sup>th</sup> July, 2025 who deposed that the application dated 3<sup>rd</sup> July, 2025 was dismissed for non-attendance by counsel on 14<sup>th</sup> July, 2025 owing to the failure to note the court's directions on the CTS and diarize the date and the same was unintentional and mistakes of counsel ought not to be visited on the client. That the applicant was keen on prosecuting the matter by promptly seeking reinstatement of the application.
3. The affiant sought the court's indulgence to reinstate the former application.
4. In his Replying Affidavit sworn on 14<sup>th</sup> August, 2025 in opposition to the application, Mr. George Arunga Sino deposed that the Notice of Motion dated 3<sup>rd</sup> July, 2025 was filed under Certificate of



Urgency, on an unidentified date and the respondent's counsel had not provided a valid reason as to why they failed to check the court's directions on the CTS portal.

5. That the directions issued on 25<sup>th</sup> July, 2025 were not issued in vain and ought to have been adhered to.
6. I have considered the submissions filed by the parties.

### **Analysis**

7. The applicant is seeking reinstatement of its Notice of Motion dated 3<sup>rd</sup> July, 2025 which the court dismissed on 14<sup>th</sup> July, 2025 for non-attendance.
8. The background of the instant application is that the applicant filed a Notice of Motion dated 3<sup>rd</sup> July, 2025 under Certificate of Urgency seeking various reliefs and when the matter came up on 7<sup>th</sup> July, 2025 the court, did not certify it urgent but directed that it be served immediately and responded to within 4 days and be heard inter partes on 14<sup>th</sup> July, 2025 on which date none of the parties was present and the court proceeded to dismiss the Notice of Motion for non-attendance. Having been filed under Certificate of Urgency.
9. The instant Notice of Motion dated 25<sup>th</sup> July, 2025 came up on 28<sup>th</sup> July, 2025.
10. The court granted a temporary stay of Taxation of the respondent's Bill of Costs dated 16<sup>th</sup> June, 2025 to enable the applicant prosecute the instant application.
11. The court directed service of the motion, response and inter partes hearing on 22<sup>nd</sup> September, 2025, when directions on the filing of submissions were given.
12. The principles that govern the setting aside and/or reinstatement of a suit or application dismissed for non-prosecution or non-attendance are well settled.
13. Under Order 12 Rule 6 and of the Civil Procedure Rules
  1. Subject to sub-rule 2 and to any law of limitation of actions, where a suit is dismissed under this Order the plaintiff may bring a fresh suit or may apply to the court to reinstate the suit.
14. Under Order 12 Rule 7

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.
15. Clearly Order 12 Rule 7 of the Civil Procedures Rules make no express reference to setting aside of a court Order dismissing a suit or application.
16. In *John Nahashon Mwangi V Kenya Finance Bank Ltd (in liquidation)* [2015] KEHC 6789 (KLR) Gikonyo J expressed the view that although there was no express provision on the setting aside or variation of an Order dismissing a suit, the court had inherent jurisdiction to ensure that justice is done.
17. The Judge expressed himself as follows:

...The decision of the court is purely a matter of discretion which as it has been said time and again should be exercised judicially on defined principles of law. 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 matter of reinstatement of a suit which has been dismissed by the court...

18. 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 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”

See also *Belinda Murai & others V Amos Wainaina* (supra).

19. In the instant application, counsel has owned up that failure to check the CTS for the directions issued by the court on 7<sup>th</sup> July, 2025 was inadvertent, an error on the part of counsel for which the blame was not shared by any other person.

20. The admission was candid and forthright which is undoubtedly creditable and although the respondent deponed that no valid reason was provided, a mistake is a mistake irrespective of the circumstances of the case and to the extent that it was not intentional, the party ought not to be outrightly condemned.

21. It is common ground that not all matters qualify for filing under certificate of urgency and matters filed as such are attended to promptly for directions and requisite orders as circumstances justify.

22. The absence of counsel on the date set aside by the court is undoubtedly disconcerting.

23. However, the allegation that the applicant did not respond to the Bill of Costs on account of lack of service by the respondent does not augur well with the administration of substantive justice which enjoins the court, as a general rule, to determine all matters on merit.

24. While citing *Grindlays Bank International (Kenya) Ltd & another V George Barboar*, Civil Application No. Nairobi 257 of 1995 and *Gichuhi Kimira V Sameul Nguno Kimotho & another* Civil Application No. Nairobi 243 of 1995 in *Janet Ng’endo Kamau V Mary Wangari Mwangi*, Civil Application No. Nairobi 338 of 2002, Waki JA held that:

Unless there is fraud, intention to overreach, inordinate delay or such other circumstances disentitling a party to the exercise of the court’s discretion, the court should in so far as it may be reasonable prefer, in the wider interest of justice to have a case decided on merits...

25. The consideration that one case should not hang over the heads of parties indefinitely must be weighed against the wider interests of justice, namely, that where possible cases must be brought to a close after a hearing on the merits”.

The court is bound by these sentiments and is guided accordingly.

26. Needless to emphasize and as submitted by the applicant, mistake of counsel should not be visited on the client (see in this regard *Belinda Murai & 6 others V Amos Wainaina* [1979] eKLR, *Philip Chemwolo & another V Augustine Kubende* [1982-88] KLR, *Kariuki V Wangechi & 7 others* Civil App. No. E250 of 2023.

27. In *David Munene Gituma V Ibrahim Mutea Munene & another* [2024] KEELRC 1724 KLR the court held:

Mistake by counsel may be pardoned. However, where such mistakes and lack of vigilance, but is condoned or tolerated by a party, who must constantly check the progress of his case.



The inordinate delay herein shows lack of interest on the part of the plaintiff to follow up their case with their former advocates as evidenced in the supporting affidavit...”

See also *Daqare Transporters Ltd V Chevron Kenya Ltd* [2020] eKLR.

28. In the instant case, counsel acted promptly after detecting the oversight.
29. In the instant case although the applicant has not alleged or demonstrated that its application to the Deputy Registrar for extension of time to file a response and submissions was rejected, the court is satisfied that in the wider interests of justice the instant Notice of Motion dated 25<sup>th</sup> July, 2025 be allowed and the Notice of Motion dated 3<sup>rd</sup> July be reinstated for hearing and determination on merits.
30. Flowing from the foregoing it is clear that the instant motion is for granting and the same is granted with no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

