

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ELC CASE NO. 34 OF 2024
(FORMERLY NAKURU ELC 277 OF 2018)
(FORMELY NAKURU H.C.C.C NO. 139 OF 2010)

**JULIUS CHESARO CHEPKOIYWO (Suing as the legal Representative
of the estate of the late ROSEMARY
NYAMBURA GACHUNIA - Deceased)**
PLAINTIFF

VERSUS

CATHERINE KARUBA.....1ST

DEFENDANT

GATHAMA NGANGA.....2ND

DEFENDANT

JOHN MWANGI MACHARIA.....3RD

DEFENDANT

MARY NDUTA NJOROGE.....4TH

DEFENDANT

JANE WANJIKU NDIRANGU.....5TH DEFENDANT

**DORCAS WAIRIMU MINYUE (Chairlady of
Mwana Mwireri Women Group)6TH**

DEFENDANT

MARGARET WANGARI MWANGI.....7TH

DEFENDANT

JOYCE WANJA KIMANI.....8TH DEFENDANT

LUCY MUGURE KUNGU.....9TH

DEFENDANT

AGNESS WAITHIRA NGUGI.....10TH

DEFENDANT

NYAMBURA MAINA.....11TH

DEFENDANT

GLADYS WAIRIMU GACEMA.....	12TH
DEFENDANT	
ESTHER WANGARI NJUGUNA.....	13TH
DEFENDANT	
DAVID AZUNGAGE CHERE.....	14TH
DEFENDANT	
DANSON MAINA WAMBUKU.....	15TH
DEFENDANT	
GEORGE NJOROGE MUREU.....	16TH
DEFENDANT	
EUNICE WAIRIMU MBERE.....	17TH
DEFENDANT	
PETER GICHUKI KING'ORI.....	18TH
DEFENDANT	
PETER MACHARIA MAK.....	19TH
DEFENDANT	
JAMES WAINAINA WAIGURU.....	20TH
DEFENDANT	
MARY NJATHI RIBA.....	21ST
DEFENDANT	
EMMAH WANDIA.....	22ND
DEFENDANT	
PETER MUTURI MBUGUA.....	23RD
DEFENDANT	
JAMES NGETHA GACHANGA.....	24TH
DEFENDANT	
LAND REGISTRAR, NAKURU.....	25TH
DEFENDANT	
GEORGE KIHUNA NGANGA & MARY NJERI KIHUNA.....	26TH
DEFENDANT	

MARY WARUIRU MWITHAGA.....	27TH
DEFENDANT	
JAMES MAKIMEI WAWERU.....	28TH
DEFENDANT	
ELIZABETH WAITHIRA KIHARA.....	29TH
DEFENDANT	
NANCY NJOKI KIRUBI.....	30TH
DEFENDANT	
CAROLYNE MURUGI NJOROGE.....	31ST
DEFENDANT	
PHILIP KURIA MWANGI.....	32ND
DEFENDANT	
JAMES KAMAU MACHARIA & PAULINE WANJIKU MWANGI.....	33RD
DEFENDANT	
SIMON IRERE WARINGO.....	34TH
DEFENDANT	
PETER KARIUKI KINYANJUI.....	35TH
DEFENDANT	
JAMES WAINAINA WAIGURU.....	36TH
DEFENDANT	
AGNES WAITHIRA NGUGI.....	37TH
DEFENDANT	
MARGARET WANGARI MWANGI.....	38TH
DEFENDANT	
JOHN MWANGI MACHARIA.....	39TH
DEFENDANT	
DANSON MAINA WAMBUGU.....	40TH
DEFENDANT	
MARY WAMUYU NJOROGE.....	41ST
DEFENDANT	

KAMAU KINUTHIA.....	42ND
DEFENDANT	
MARY NDUTA NJOROGE.....	43RD
DEFENDANT	
DORCAS WAIRIMU MINYUE.....	44TH
DEFENDANT	
ESTHER WANGARI NJUGUNA.....	45TH
DEFENDANT	
MACHAEL NJOROGE MACHARIA.....	46TH
DEFENDANT	
DORCAS WAIRIMU MINYUE.....	47TH
DEFENDANT	
DAVID AZUNGANE CHORE.....	48TH
DEFENDANT	
FRANCIS NGANGA MWANGI.....	49TH
DEFENDANT	
PETER MACHARIA MARK.....	50TH
DEFENDANT	

RULING

1. Vide a Notice of Motion dated 4th June 2025 filed pursuant to the provisions of Section 5 of the Judicature Act, Sections 1A, 3A of the Civil Procedure Act, Order 12 Rule 7 and Order 51 Rule 15 of the Civil Procedure Rules and all enabling provisions of law, the Defendants/Applicants seek that the court sets aside its orders of 29th May 2025 dismissing the Applicants’ Application dated 5th December 2024, for non-attendance and/or non-compliance and thereafter reinstate their application for hearing on its merit. And for date for ruling on their said Application dated 5th December 2024. That the costs of the Application be in cause.
2. The application is supported by the grounds therein as well as by the sworn affidavit of Hakim Suleiman Rajab, an Advocate of the High Court of

Kenya who deponed that this Court had delivered a Judgement in Naivasha ELC Case No. 34 of 2024 awarding the Plaintiff the suit property and costs of the suit as against the Defendants. That the Defendants being dissatisfied with the Judgement of the court had on 5th December 2024, lodged an Appeal against the whole decision at the Court of Appeal in Nakuru; being Civil Appeal No. E188 of 2024.

3. That after lodging the said appeal, the Applicants had filed an application dated 5th December 2024 seeking stay of execution in Naivasha ELC Case No. 34 of 2024 pending the hearing and determination of the appeal against the Judgement that had been made by this Court on the 14th November 2024. That whereas the said application had been on the cause list as No. 2 for mention before this court on 17th March 2025, the Defendants/Applicants' Advocates on record was unable to join the virtual proceedings.
4. That he had instructed and/or requested a colleague to hold his brief in the matter and get directions from court as he was away from chambers on a leave to exercise and perform his fast during the Holy month of Ramadhan in the Islamic Calendar. That however, there was a breakdown in communication with his colleague who had failed to tender appearance on his behalf. That nonetheless, he had made a point to follow up with the Court after the proceedings wherein he had learnt that the parties had been given leave to file and serve their submissions and that a Ruling date for the Application had been set for the 29th May 2025.
5. That he had complied with the said directions and filed a Further Affidavit, Written Submissions and a List of Authorities all dated 27th May 2025 on the morning of 29th May 2025. That hoping to arrest the Court's Ruling on the said morning of 29th May 2025 on grounds that the delay in complying with the court's direction on filing of submissions had been occasioned by late service of a Replying Affidavit by the Plaintiff, he was surprised to learn that an application for dismissal of the application for want of

prosecution had been made on 17th March 2025 by the Plaintiff's Advocate. That subsequently, the court had made its Ruling dismissing the matter for non-attendance and/or noncompliance.

6. He deponed that there were no sufficient and legitimate grounds to warrant the dismissal of the Applicant's application by the Honorable Court. That in fact, the record of the court could attest that on the 30th January 2025 and 19th February 2025 when the application had come up for hearing and mention respectively, the Plaintiff and or his Counsel did not appear before court but leave of 14 days had been granted to the Plaintiff to file and serve written submissions. That nonetheless, on 17th March 2025, without the knowledge of the Applicants or their Advocates on record, an application to dismiss the application for want of prosecution had been made by the Plaintiff's Counsel without first complying with the directions of the court as was evident from the Judiciary E-filing portal that the Plaintiff's Replying Affidavit and Submissions had been filed on or about 23rd April 2025.
7. That no Notice to Show Cause had been issued by the Honorable Court or Counsel for the Plaintiff to indicate that the application dated 5th December 2024, had been liable for dismissal for want of prosecution. That subsequently, there were no legitimate grounds for dismissing the suit for want of prosecution and/or non-compliance since the same had not been Applicants' fault but their Advocate on record who mistakenly had instructed and/or requested a colleague to hold his brief in the matter and get directions from court hence the Court could not possibly condemn the Defendants/Applicants unheard.
8. That the Defendants would ultimately be denied an opportunity to prosecute their application dated 5th December 2024 unless the Honorable Court adopts the Supporting and Further Affidavit as well as Written Submissions that had been filed in support of the Application and issue a Ruling date for the Application as parties had fully complied with

the direction of the court. That it was trite law that a party should not be condemned unheard thus it was in the interest of justice that the Advocates for the Applicants be allowed to prosecute the present suit.

9. That the Constitution of Kenya, 2010 guarantees one the right to a fair trial and fair administration of justice and as such, the Applicants should be afforded a chance to prosecute their application dated 5th December 2024 since they stood to be prejudiced unless the orders issued herein were set aside and/or discharged. That it was thus in the interest of justice that the orders that had been issued by Court on 29th May 2025 be set aside and/or discharged to enable the matter proceed to hearing and/or Ruling on merit.
10. In response and in opposition to the Defendants/Applicants' Application, the Plaintiff/Respondent vide his Replying Affidavit dated 17th June 2025 sworn by Julius Chesaro Chekoiywo, the Plaintiff/Respondent herein deponed that the Defendants/Applicants were making a mockery of the Court's timelines and directions and taking them for granted hence the Application dated 4th June 2025 should be disallowed with costs. That the Defendants/Applicants through their Advocates on record were all aware of the Court's timelines and directions but they had instead chosen not to go by the said timelines and or directions.
11. That there had been no explanation given by the Applicants/Defendants as to why they choose to file (if they did because none were served on his Advocates on record) their submissions on 27th May 2025 yet the Ruling had been slated for 29th May 2025, less than 24 hours to the delivery of the Ruling. That it was very interesting to note that the Applicants/Defendants had preferred to go for their own timelines rather than the Court's timelines only for them to emerge with the present Application. That indeed, if the Defendants/Applicants' Application dated 5th December 2024 had been successful, the instant Application

would not have been filed thus the Defendants/Applicants could only blame themselves for their own misfortunes.

12. That subsequently, the argument that the Defendants/Applicants had been denied the opportunity to be heard on the Application dated 5th December 2024 and that no Notice to Show Cause had been granted was laughable and quite ridiculous. That indeed, whereas the Applicants/Defendants had filed the Application dated 5th December 2024, wherein they had been given an opportunity to canvass the same through filing and serving submissions; they had squandered the said opportunity only to emerge and cry that they had been condemned unheard. He thus deponed that the instant Application was a mockery of justice and urged the Court to decline the invitation to regurgitate the Application dated 5th December 2024.
13. That the Applicants/Defendants' request was akin to urging the Court to "chew its cud" for them and redecide the Application dated 5th December 2024 hence he urged the court not to agree to being made a ruminant for sloppy litigants.
14. The Application dated 4th June 2025 was canvassed by way of written submissions wherein the Defendants/Applicants vide their submission dated 2nd July 2025 summarized the factual background of the matter before framing three (3) issues for determination as follows:
 - i. Whether there was inordinate delay in bringing the application.
 - ii. Whether the applicant has advanced good reasons for non-attendance when the matter was scheduled for hearing.
 - iii. Whether the reinstatement will cause prejudice to the Respondent.

15. On the first issue for determination as to whether there had been inordinate delay in bringing the instant application, they placed reliance on the decisions in the cases of **Utalii Transport Company Limited & 3 Others v Nic Bank Limited & Another [2014] eKLR** and **Vincent Amolo Ambani t/a Fast Track Investments v National Bank of Kenya Ltd [2021] KEELC 4257 (KLR)** as well as the provisions of Order 12 Rules 6(1) and 7 of the Civil Procedure Rules to submit that being dissatisfied by the order in ELC Case No. 34 of 2024 dismissing their Application dated 5th December 2024 for want of prosecution, they had immediately instructed their Advocate on record to lodge the instant application to reinstate the suit so that the matter could proceed for Ruling on its merit.
16. That indeed, on 4th June 2025, through their Advocate, they had proceeded to file the present application in pursuance of their right to be heard hence no harm would befall the Respondent when the Applicants are allowed to pursue their right to be heard and their case heard and determined to its logical conclusion. It was thus their submission that they had demonstrated to the Honourable Court that the present Application had been brought before the court in a record 4 days after the delivery of the impugned Ruling hence there was no unreasonable delay.
17. As to whether the Applicant had advanced good reasons for non-attendance when the matter was scheduled for hearing, they placed reliance in the decided case of **John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation) [2015] eKLR** where the court had laid down the principles for reinstatement of dismissed suits. Further reliance was placed in the decided case of **Belinda Murai & Others v Amos Wainaina [1978] KLR 278** to submit that contrary to the assertion that they had willfully frustrated the expeditious disposal of the instant matter by failing to attend court as required and filing submissions within the set timelines, there had been no legitimate ground for

dismissing the suit for want of prosecution and/or non-attendance since the same had not been the Applicants' fault but their Advocate on record who had mistakenly diarized the matter for 28th February 2025 as opposed to 25th February 2025 hence the court could not condemn the Applicants unheard since human is to error.

18. That further, it was not disputed that the matter had been scheduled for mention on the 17th March 2025 when the Applicants' Advocates had failed to enter appearance and join the proceedings and that the same had been due to a breakdown in communication with a fellow colleague who had been instructed to tender appearance on his behalf as the Applicants' Advocates had been away from chambers on leave to exercise and perform his fast during the Holy month of Ramadhan in the Islamic Calendar. He maintained that the court's records could attest that indeed the Applicants' advocate did not appear before the court hence the Respondent's claim that the Applicants were making a mockery of the court was out of order.
19. That in any case, the directions that had been issued had only come to the knowledge of the Applicant's Advocate on Record late as he had not attended court on 17th March 2025 due to religious observance which was excusable. Reliance was placed on the decision in the case of **Shah v Mbogo [1967] EA 116**. They maintained that they had legitimately expected the court to confirm compliance of the directions that had been issued on the 25th February 2025 before embarking on the directions as regards a Ruling date hence the same had construed the Ruling of the court to be a mistake and/or error on record by the Court for dismissing the suit without giving the Applicants an opportunity to respond to the allegations of willfully frustrating the expeditious disposal of the matter.
20. That the doctrine of equity required that he who comes to equity must come with clean hands, but as the record would show, the Respondents were served with the Application on the 5th December 2024 but tendered

a response 4 months later against the express requirements and directions of the court that the response be filed within 14 days of service thus the Respondents were out of order in claiming that the Applicants had preferred to go by their own timelines when they themselves had chosen to ignore the directions of the court and filed their documents at their own convenience. That in any case, it was not a strange occurrence for an Advocate of the High Court or any other human being for that matter, to be forgetful or to make an error since human is to error hence it was against the rules of natural justice for the court to discredit and dismiss the Applicant's suit on account of a human error by their Advocate which was beyond their control and curable by an award of costs as opposed to the dismissal of the suit with triable issues which the Court ought to hear and determine on its merits.

21. That accordingly, they had demonstrated to the Court that they had a legitimate reason for failing to attend the hearing of the matter on 17th March 2025 hence they should not be denied a chance to pursue their claim as against the Respondents on its merit. That in any case, in the absence of Notice to Show Cause, the decision to dismiss their claim had been unfair and prejudicial since they had actively been participating in the proceedings.
22. On the third issue for determination as to whether the reinstatement would cause prejudice to the Respondent, they submitted that it was trite law that a party should not be condemned unheard hence it was in the interest of justice that the orders that had been issued on 29th May 2025 be set aside and the matter be heard on its merit. That in any case, the Constitution guarantees one the right to a fair trial and fair administration of justice hence they could not be condemned unheard. That they were ready to proceed to the Ruling in the matter herein by way of their written submissions and further affidavit that were already on record thus the

matter should continue to its final conclusion since no harm would befall the Respondent.

23. In conclusion, they submitted that they had satisfied all the pre-requisite for the reinstatement of a suit as set out in Order 12 Rule 6 and Rule 7 of the Civil Procedure Rules and as had been interpreted by the courts. That it was thus in the interest of justice and law that the present suit be allowed as prayed since the Court has the requisite jurisdiction to dispense with the same.
24. The Plaintiff/Respondent on the other hand vide his submissions dated 8th July 2025 asked the court to consider the Affidavits for and against the instant Application and the parties' submissions before placing reliance on the decisions in the cases of **Jeremiah Matoke v Kenya Commercial Bank Ltd & William Wilkie Ayienda [2021] eKLR** and **John Onger Mariaria & 2 Others v Paul Matundura, Civil Application No. Nai. 301 of 2003 [2004] 2 EA 163** to urge the court to disallow the Application dated 14th June 2025 with costs to the Plaintiff/Respondent.

Determination.

25. The Defendants/Applicants herein had filed an Application dated 5th December, 2024 seeking that the court grants a stay of execution in Naivasha ELC Case No. 34 of 2024 pending the hearing and determination of the appeal against its judgement delivered on the 14th November, 2024. However, the said Application had been dismissed on 29th May 2025 for want of prosecution. The Defendants/Applicants have now filed the instant Application dated 4th June 2025 seeking that the Court set aside the orders made on 29th May 2025 dismissing their application dated 5th December 2024, for non-attendance and/or non-compliance and reinstate the same for hearing on its merit and thereafter issue a Ruling date for the Application dated 5th December 2024 with the costs in cause.

26. I have also considered the Plaintiff/Respondent's response thereto opposing the said application, the parties' submissions, the authorities cited and the applicable law.

27. Subsequently, I find the issues arising for my determination as follows.

- i. Whether there has been raised sufficient ground to set aside the dismissal order and if so;
- ii. Whether the Application dated 5th December, 2024 should be reinstated for hearing on its merit and whether a Ruling date on the same should be issued.
- iii. Who should bear the costs of the Application?

28. The law applicable for setting aside judgment or dismissal is Order 12 Rule 7 of the Civil Procedure Rules which provide as follows;

"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."

29. Setting aside a judgment or order for dismissal is a matter of the discretion of the court, as was held in the case of **Esther Wamaita Njihia & 2 others vs. Safaricom Ltd [2014] eKLR** where the court citing relevant cases on the issue held inter alia:-

*"The discretion is free and the main concern of the courts is to do justice to the parties before it (see **Patel vs E.A. Cargo Handling Services Ltd.**) the discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice (see **Shah vs. Mbogo**). The nature of the*

*action should be considered, the defence if any should also be considered; and so should the question as to whether the Plaintiff can reasonably be compensated by costs for any delay bearing in mind that to deny a litigant a hearing should be the last resort of a court. (See **Sebei District Administration vs Gasyali**. It also goes without saying that the reason for failure to attend should be considered."*

30. I have considered the reasons as presented by the Defendants/Applicants in their quest to set aside the orders of 29th May 2025 to wit that Counsel on record was unable to join the virtual proceedings. That further, Counsel he had asked to hold his brief failed to tender appearance on his behalf. That he was also surprised to learn that an application for dismissal of the application for want of prosecution had been made on 17th March 2025 by the Plaintiff's Advocate without his knowledge. That his attempt to arrest the ruling on the 29th May 2025 when it was set to be delivered, on grounds that the delay in complying with the court's direction on filing of submissions had been occasioned by late service of a Replying Affidavit by the Plaintiff, was dismissed and subsequently, the court had made its Ruling dismissing the matter for non-attendance and/or noncompliance.

31. The Plaintiff/Respondent opposed the Defendants/Applicants' application for reasons that the Defendants/Applicants through their Advocates on record were aware of the Court's timelines and directions but choose not to comply. That they had squandered an opportunity to articulate their application only to emerge and cry that they had been condemned unheard. That in any case, they had not explained why they had chosen to file their submissions on 27th May 2025 yet the Ruling had been slated for 29th May 2025, less than 24 hours to the delivery of the Ruling.

32. The Defendants/Applicants' argument for seeking to set aside the order dismissing their application dated 5th December 2024 was based on the reason that on 17th March 2025 when the matter had come up for mention, the Defendants/Applicants' Advocates on record was unable to join the virtual proceedings and that there had been a breakdown in communication with the colleague that he had requested to hold his brief thus no appearance had been tendered on his behalf.
33. Subsequently, I have taken the liberty to peruse through the court record to satisfy myself as to whether the dismissal of the suit was as a result of an accident, inadvertence, excusable mistake, an error or otherwise and so as to determine whether the Defendants/Applicants had established sufficient cause to have the order set aside.
34. It is on record that pursuant to delivery of the court's Judgment on the 14th November, 2024 the Defendants/Applicants filed a Notice of Motion dated 5th December, 2024 seeking stay of execution of the said Judgement pending the hearing and determination of an intended appeal. On the 30th January 2025 in the presence of the Applicants' Counsel, the court gave directions for service of the Application upon the Respondents within the cause of the day who were granted leave of 14 days to file and serve their respective responses with corresponding leave of 7 days to the Applicant to file any response if need be.
35. The matter was set for mention on 19th February 2025 to confirm compliance and to take further directions. Parties were directed to maintain the status quo pending as at 5th December 2024 when the application was dated, pending the outcome of the said application.
36. On the 19th February 2025, there had been no response by the Respondents wherein, directions were taken to dispose of the unopposed Application on its merit, by way of written submissions which were to be filed within 14 days with a grace period extended to the Respondent to comply. In the presence of the Applicants' Counsel, a mention date to confirm compliance and to fix a date for ruling was then

scheduled for the 17th March 2025, with an extension of the interim orders.

37. Come the 17th March 2025, there had been no appearance for Counsel for the Applicant and neither had there been compliance. Counsel for the Respondent sought for the dismissal of the application. The Court noted that none of the parties had complied with its directions despite having been given several chances thus concluding that parties were no longer interested in prosecuting the matter. Instead of dismissing the application at the behest of the Plaintiff/Respondents' Counsel, the court set a Ruling date for 29th May 2025, while granting the parties leave to comply with the directions issued on the 19th February 2025, within 14 days.
38. On the 29th May 2025 when the matter came up for ruling, there had still been no compliance wherein the Applicant's Counsel sought that the court arrests its ruling so that they could comply. The court noting the indolence of the parties and the fact it had given them more than sufficient time to comply and further that it had burnt the midnight oil to write its ruling, rejected the application and proceeded to deliver its ruling therein dismissing the Application dated 5th December, 2024 for want of prosecution.
39. Unlike what the Applicants' Advocate wants us to believe that the delay in compliance with the court's directions had been occasioned by the fact that the Respondent had not filed his response, for which there had been no legitimate ground for dismissing their application seeking stay of execution, for want of prosecution, it could be seen from the proceedings that not only did he fail to comply with the court's directions as an applicant, but that the failure and/or delay by the Respondent to file a response did not prevent him from prosecuting his application. Indeed, even after the Respondent had failed to file a response to the Applicants' Application, the court had declined to allow

the application as prayed and directed that the Applicants to file submissions so that the Application could be determined on its merits.

40. Further, the Applicants' argument that the Application had been dismissed for want of prosecution on the Plaintiff's Advocates Application without his notice could not stand since the court had expressed itself that parties were no longer interested in prosecuting the application, wherein instead of dismissing the same, it had given them yet another chance to comply wherein it had set the date for ruling wherein the parties had yet again failed to comply. From the chronology of events herein above stated, it cannot be said that the Applicants had been denied an opportunity to prosecute their application.

41. The Supreme Court of India in the case of **Parimal vs Veena 2011 3 SCC 545** attempted to describe what sufficient cause constituted when it observed that: -

"Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the

reason that whenever the court exercises discretion, it has to be exercised judiciously.”

42. Indeed, in the case of **Wachira Karani v Bildad Wachira [2016] KEHC 6334 (KLR)**, Mativo J (as he then was) held that:

“Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application. Thus, the defendant must demonstrate that he was prevented from attending court by a sufficient cause...”

43. Did the failure by the Applicants to comply with the court’s directions constitute sufficient cause or was the same meant to deliberately delay the cause of justice? I find that the turn of events as herein submitted did not constitute sufficient cause to warrant exercise of the court’s discretion.

44. The test to be applied was whether the Applicants had honestly and sincerely intended to prosecute the matter. Sufficient cause is thus the cause for which the Applicant could not be blamed for his inaction. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances. In the instant case, the Applicants did not demonstrate sufficient cause why they never prosecuted their Application despite indulgence by the court.

45. I find the reason given by Counsel for the Applicants that there were no legitimate grounds for dismissing their application seeking stay of execution, for want of prosecution did not constitute an accident, inadvertence or excusable mistake or error but mere excuses which does not deserve the court’s discretion.

46. Indeed, the Court of Appeal in the case of **Richard Nchapi Leiyagu vs. Independent Electoral & Boundaries Commission & 2 others [2014] eKLR** expressed itself as follows: -

“we agree with the noble principles which goes further to establish that the court’s discretion to set aside ex parte Judgment or Order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.”

47. In the present case, I find that the Defendants/Applicants had deliberately failed to prosecute their application by failing to comply with the court’s directions as it was their primary duty to take steps to expeditiously prosecute their application since they were the ones who had dragged the Plaintiff/Respondent to court after the court had delivered a judgement in his favour.

48. I find that the present Application is an afterthought, a waste of judicial time and an abuse of the court process and is also intended to vex the Respondent/Plaintiff and put him to expense. The Respondent is being gravely prejudiced by the Applicants and therefore there is need for the court to balance the rights of both parties and to exercise its discretion in dispensing justice for it is not powerless to grant relief, when the ends of justice and equity so demand. The application seeking to set aside the orders of the court that had dismissed the Applicants’ Application dated 5th December 2024 therefore fails and so does the second issue for determination.

49. In the end, I find that the Application dated 4th June 2025 has no merit and the same is dismissed with costs.

**Dated and delivered via Microsoft Teams at Naivasha this 16th day of October
2025**



M.C. OUNDO

ENVIRONMENT & LAND - JUDGE