



**Gacheru v Dobogo & another (Environment and Land Appeal
E027 of 2024) [2025] KEELC 6637 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6637 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND APPEAL E027 OF 2024**

AE DENA, J

OCTOBER 2, 2025

BETWEEN

WANJIRU GACHERU APPELLANT

AND

CHRISTOPHER SOM DOBOGO 1ST RESPONDENT

**DISTRICT LAND REGISTRAR UGENYA/UGUNJA DISTRICTS 2ND
RESPONDENT**

RULING

1. The subject of this ruling is the application dated 22/10/2024 filed by the Appellant and seeks the following verbatim orders:
 - i. That the dismissed application be reinstated for fresh hearing of the application dated 7th August 2024
 - ii. That the Applicant be allowed to provide further evidence at her disposal as may be needed by the court
 - iii. That costs of the application be provided for.
2. The application is supported by an affidavit dated 22nd October 2024 sworn by Wanjiku Gacheru.
3. In the said affidavit, the Applicant avers that her application dated 7th August 2024 was slated for hearing on the 15th October 2024, however upon her counsel logging into the system, there were technical hitches that prevented her from filing any documents.
4. That it took the intervention of the judiciary ICT officer Mr. Alban to fix the hitches.



5. That upon her advocate logging back to the court virtual system, the judicial officer had already called out the matter and dismissed the same for want of prosecution. The applicant annexed WhatsApp text extracts to prove her effort to get into the court system that fateful day.
6. That despite the Appellant having been in court physically, the officer did not take notice of her presence, thus the dismissal herein.
7. That due to her illiteracy and old age, she did not understand what was going on in court and even though physically present she could not do anything. That no notice to show cause was served upon her before the said dismissal.
8. She averred that it is in the interest of justice that the application be allowed and which application had been filed timeously.

Response to the application for Reinstatement

9. The first Respondent Christopher Som Dibogo opposed the application vide a Replying affidavit sworn on 4/2/2025 and filed on 9/2/2025.
10. It is averred that at the time of hearing of the said application, the Appellant was present physically in court and never bothered to respond when her matter was called out. That immediately the Counsel was denied audience he ought to have informed the court to allow the Appellant who was present physically to address the court and take direction but he never bothered. That the Appellant had two months to deal with the court's system issues but instead decided to wait for day of hearing to contact the court ICT Officer. That there has been a delay in filing the application which was an afterthought and a waste of the court time.

Submissions

11. The application was canvassed by way of written submissions. The Applicants submissions are dated 25th April 2025.

Applicants Submissions

12. The applicant addressed the court on two issues namely whether sufficient cause has been shown and whether the respondents will suffer prejudice if the application is reinstated. These issues are as guided by the decision in *John Nabashon Mwangi v. Kenya Finance Bank Limited (in Liquidation)* (2015) e KLR as well as the provisions of Order 12 Rule 7 of the *Civil Procedure Rules*.
13. Rehashing the Applicants' depositions and the grounds upon which the application is premised it is submitted that the applicant has demonstrated reasonable grounds for the application to be reinstated. That the applicant also moved with speed in bringing the instant application within 7 days of the dismissal.
14. On whether the Respondent will suffer prejudice by grant of the orders sought, it is contended that the Respondent will not suffer any prejudice if the application is reinstated. That it is in fact the Applicant who will suffer injustice if the said application is not reinstated. Article 48 and 50 of the *Constitution* on the right to access justice and a fair hearing are relied upon. Also, Article 159 and Section 3, 4 and 13 of the Land and Environment Act on the need to focus on substantive justice. Reliance is placed on Meru ELC Case no. E012 of 2022 *Danphone Kamuna v. Jeniffer Nkirote*. The court is urged to allow the application.



Respondents Submissions

15. On 27/02/2025 Counsel for the Respondents informed the court the respondent would rely on his replying affidavit.

Analysis And Determination

16. I have considered the said application, the rival affidavits, submissions as well as the authorities relied upon and find the issue for determination is whether the instant application has merit.
17. The application has been brought under Section 3A of the *Civil Procedure Act*, Chapter 21 Laws of Kenya and Article 159(2) of the *Constitution* of Kenya.
18. The substantive provisions given the nature of the orders sought should be Order 12 Rule 7 of the *Civil Procedure Rules*. I note the court has also been moved to invoke the overall objective of the court. There is no specific rule for dismissal of applications but the principles in my view apply since an order for dismissal has been made.
19. In the case of *John Nahashon Mwangi v. Kenya Finance Bank Ltd (in liquidation)* [2015] KEHC 6789(KLR) the court stipulated the principles to be considered in exercising the discretion on whether or not to reinstate a case as follows:

“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. These principles were enunciated in a masterly fashion by courts in a legion of decisions which I need not multiply except to state that; courts should sparingly dismiss suits for want of prosecution for dismissal is a draconian act which drives away the plaintiff in an arbitrary manner from the seat of judgment. Such act are comparable only to the proverbial “Sword of the Damocles” which should only draw blood where it is absolutely necessary. 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 a 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.”
20. In the instant case, it is not in dispute that a judgment was delivered on 29th May 2024. That the Appellant being dissatisfied by the same filed an application dated 7th August 2024 for extension of time to appeal. It is the said application that was to be heard on the 15th October 2024. It is the Applicant’s case that she had already appointed counsel to represent her. That on the date of hearing the said application the same was dismissed for want of prosecution. According to the applicant on the material day the court filing system is reported to have had technical hitches and the Applicants counsel was unable to log in and file further documents. Further that the applicant was present in court but was not given audience in the absence of counsel.
21. My understanding of the reasons advanced by the applicant other than the issue of her being accorded audience above is that Counsel was busy trying to file documents that morning and, in the process, she did not log in good time, the matter was called out by the court in her absence.



22. The record of 15/10/2024 indeed shows that only Ms. Omondi for the 1st Respondent and Ms. Mwaura who was holding the brief of Ms. Essendi for the 2nd respondent appeared before court. The court noted that the date for the application had been fixed 1 and half months ago and proceeded to dismiss the application dated 7/08/2024 for want of attendance and prosecution with costs to the respondents.
23. I have noted the Applicants averment that she was not issued with Notice. In my view this argument is misplaced as the matter was not coming up for a Notice to Show Cause but for hearing and the consequences for non-attendance could be invoked. But I have noted her explanation that she was in court which is not refuted by the respondent except that she may not have sought the attention of the court being ignorant of court proceedings. I would not blame the Applicant for this noting the effort on her part to attend court to follow up on her application despite having engaged counsel.
24. But the question that lingered in my mind is why the counsel waited to file the documents on the day of the hearing of the application when they had a whole one month plus to do so. The system challenges in my view should not be the basis upon which to reinstate the application. The blame lies squarely on the part of counsel for the applicant who waited until the last minute to file documents. In *Bains Construction Co. Ltd v John Mzare Ogowe* (2011) eKLR the Court of Appeal observed: -
- ‘It is to some extent true to say mistakes of counsel as in the present case should not be visited upon a party but it is equally true when counsel as agent is vested with authority to perform some duties and does not perform it, surely such principal should bear the consequences’
25. However, I understand the application belongs to the litigant and not the Counsel. Therefore, it will be unfair and unjust to punish the litigant who made effort to be present in court, for the mistake of her Counsel. See *Njua Consolidated Company Ltd v Commercial International Bank & 2 others* [2025] KEHC 2990 (KLR)
26. The court also appreciates that there was no delay in filing the application for reinstatement. I say so because the application dated 7/8/2024 was dismissed by the court on 15th October 2024. The application herein for reinstatement was filed on 22nd October 2024. This is a week after the dismissal. In my view I don’t think this can be termed as an inordinate delay. It is not.
27. I must also consider the test on whether there would be any prejudice to be suffered by the respondent. The 2nd respondent elected not to participate in this application. The 1st respondent seems to indicate that the application is an afterthought. He has not stated the prejudice to be suffered. The court has been referred to the persuasive *dictum* of Yano J Meru ELC Case no. E012 of 2022 *Danphone Kamuna v. Jeniffer Nkirote*, where the court stated thus; -
- “...on the contrary, it is the Plaintiff who would be greatly prejudiced by being driven from the seat of justice without hearing, if his application is dismissed and the dismissed application not reinstated...”
28. I’m in agreement and persuaded by the above *dictum*.
29. In addition the application that was dismissed seeks a stay of execution of Judgement and decree of this court pending hearing and determination of the present appeal. The judgement is against the applicant. I see no prejudice that will be occasioned to the adverse party in allowing the present application. In any case and without going into the merits of the main application dated 7/8/2024 the Respondent will be fully heard on their objections to the said application. I think the lower risk of injustice should be to have the said application heard on its merits.



30. Consequently, I hereby allow the application in terms of prayer i) and ii). There shall be no orders as to costs.

DELIVERED AND DATED AT SIAYA THIS 2ND DAY OF OCTOBER 2025

HON. LADY JUSTICE A.E. DENA

JUDGE

02/10/2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Achero for Applicant

Ms. Omondi for 1st respondent

No appearance for 2nd respondent

Court Assistant: Ishmael Orwa

