



**Ndegwa v Mwangi (Environment and Land Case E15 of 2023)  
[2025] KEELC 6732 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6732 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E15 OF 2023  
MAO ODENY, J  
OCTOBER 7, 2025**

**BETWEEN**

**JENNIFER WANJIKU NDEGWA ..... APPLICANT**

**AND**

**PETER MUCHIRI MWANGI ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 27<sup>th</sup> March, 2025, seeking the following orders:
  - a. Spent
  - b. The orders dismissing the applicant's Notice of Motion allegedly dated 16<sup>th</sup> February, 2023 by Hon. Justice Antony O. Ombwayo on 13<sup>th</sup> February, 2025 for want of attendance be set aside.
  - c. The application by the applicant is dated 14<sup>th</sup> February, 2025 and not 16<sup>th</sup> February, 2023.
2. The application is supported by the annexed affidavit of Lawrence Ngugi Mwangi, the Plaintiff/Applicant's counsel, sworn on 27<sup>th</sup> March, 2025, where he deponed that on the hearing of the Notice of Motion, he was ready to prosecute the same, but he suffered technical connection challenges. It was his deposition that his failure to access or attend court was not deliberate or due to neglect, and urged the court to grant the orders sought.
3. Peter Muchiri Mwangi, the Defendant/Respondent filed a Replying Affidavit sworn on 28<sup>th</sup> April, 2025, and deponed that the application is an abuse of court process and does not meet the settled principles for setting aside a court order. It was his deposition that the Plaintiff or her advocate on record had not offered any reasonable explanation why they failed to attend court when their application dated 14<sup>th</sup> February, 2025, came up for hearing.



4. The Defendant/Respondent deponed that the allegation that her advocate on record had problems connecting to the court virtually does not hold water, considering that the said law firm is situated in Nakuru town within close proximity to the court premises. He urged the court to dismiss the application dated 27<sup>th</sup> March, 2025.

#### **Plaintiff/applicant's Submissions**

5. Mr. Lawrence Mwangi, counsel for the Plaintiff filed submissions dated 20<sup>th</sup> June, 2025, and submitted that the application has merit and the Honourable Court is vested with inherent jurisdiction to set aside its own orders where it is shown that the orders were made in error, irregularly or without consideration of material facts or where justice demands.
6. Counsel relied on Section 3A of the *Civil Procedure Act* and Order 12 Rule 7 of the Civil Procedure Rules, and on the cases of Githiga & 5 others vs Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR), Yooshin Engineering Corporation vs Aia Architects Limited (Civil Appeal E074 of 2022) [2023] KECA 872 (KLR) and Shah vs Mbogo & Another [1967] EA 116.
7. Counsel submitted that the matter involves serious allegations of contempt which deserve full ventilation before a competent court and relied on Article 50 (1) & 159 (2d) of *the Constitution* of Kenya and the cases of Kimata vs Maloba & another (Civil Appeal 103 of 2018) [2022] KECA 1114 (KLR), Philip Chemwolo & Another vs Augustine Kubende [1982-88] 1 KAR 103, CMC Holdings Ltd vs Nzioki [2004] 1KLR 173, Kiai Mbaki & 2 others vs Gichuhi Macahria & another [2005] KECA 143 (KLR), Itando Mission of Hope and Health Care vs Munyasi & 2 others [2024] KEHC 11421 (KLR), Wachira Karani vs Bildad Wachira [2016] KEHC 6334 (KLR) and PMM vs JNW [2020] eKLR. Counsel urged the court to grant the orders sought.

#### **Defendant/respondent's Submissions**

8. Peter Muchiri Mwangi, the Defendant/Respondent filed submissions dated 16<sup>th</sup> June, 2025, and submitted that in order for the Applicant to be granted the review orders sought, she has to show to the satisfaction of the Honourable court that there has been discovery of new and important evidence which was not within his knowledge or could not be produced at the time when the orders to be reviewed were made. He submitted that the Applicant has not discharged the burden.
9. The Defendant/Respondent submitted that the orders issued on 13<sup>th</sup> March, 2025 in his favour were on merit and the same should stand. The Defendant relied on Order 45 Rule 1 of the Civil Procedure Rules, 2010 and the case of Hosea Nyandika Mosagwe & 2 others vs County Government of Nyamira [2022] eKLR. The Respondent further submitted that there is no tangible error apparent on the face of record that has been proven by the Plaintiff/Applicant to warrant review, and in the case of Kenya Human Rights Commission vs Attorney General & another [2018] eKLR, and urged the court to dismiss the application with costs.

#### **Analysis And Determination**

10. The issues for determination are as follows:
  - a. Whether there is a basis for the court to exercise its discretionary power to set aside the order of 13<sup>th</sup> February 2025 and reinstate the Application dated 14<sup>th</sup> February 2025



- b. Whether the applicant has tendered a reasonable explanation for his failure to appear in court on the date the application was dismissed for non-attendance.
11. The court has unlimited discretionary power to set aside interlocutory judgments against the applicant to avoid causing injustice and hardships caused by inexcusable errors. In the case of *Belinda Murai & Others vs Amoi Wainaina* (1978) and that of *Martha Wangari Karua vs IEBC Nyeri Civil Appeal No. 1 of 2017*, the court held that the rules of natural justice require that the court must not necessarily drive any litigant from the seat of justice without a hearing, however weak his or her case may be.
12. Counsel for the applicant submitted that on the hearing of the Notice of Motion, he was ready to prosecute the same but he suffered technical connection challenges. It was his deposition that his failure to access or attend court was not deliberate or due to neglect.
13. In the case of *South Empire Traders –vs- Nakuru Players Theatre Club* (2018) eKLR, it was held that:  
“The reinstatement of any application or suit that has been dismissed for non-attendance and/or for failure to prosecute ought not be considered to be automatic. Cogent reasons must be given for the non - attendance, for failure to attend court is a serious issue, and any person failing to attend court must be ready to bear the consequences which may arise therefrom. No applicant should imagine that all he/she needs to do is file an application for reinstatement and that the same will be allowed as a matter of course and indeed, if courts adopt that stance, it will greatly prejudice the administration of justice for all that a person will need to do is fail to appear, and sit in the comfort zone, that he can always file an application for reinstatement which will be allowed. In this instance, I am afraid that I am not persuaded by the reasons tabled.”
14. The Applicant must tender a reasonable explanation for his failure to appear in court, when the application was dismissed. Counsel explained that he was ready to prosecute the application but had technical challenges with the virtual platform. This matter was supposed to be before this court but it was mentioned before court No. 1, as this court was on leave.
15. In the case of *Richard Nchapai Leiyangu vs IEBC & 2 others* (2016) eKLR where the court expressed itself as follows:  
“We agree with the noble principles which go further to establish that the courts’ discretion to set aside ex parte judgement 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”
16. I will therefore exercise my discretion and give the Applicant the benefit of doubt. Consequently, the application is hereby allowed as prayed. Applicant to fix the Application for hearing within 30 days, failure to which the order lapses. Costs to be in the cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 7<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. A. ODENY**

**JUDGE**

