



**Fumbu v Ibrahim County Executive Member for Lands - Taita  
Taveta County (Environment and Land Case E014 of 2024)  
[2025] KEELC 7252 (KLR) (Environment and Land) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7252 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE E014 OF 2024  
EK WABWOTO, J  
OCTOBER 23, 2025**

**BETWEEN**

**GAUDENSIA MSHAI FUMBU ..... APPELLANT**

**AND**

**HUSSEIN IBRAHIM COUNTY EXECUTIVE MEMBER FOR LANDS - TAITA  
TAVETA COUNTY ..... RESPONDENT**

**RULING**

1. This Ruling is in respect to the application dated 27<sup>th</sup> May 2025 which seeks to set aside the decision and orders of this court issued on 20<sup>th</sup> May 2025 wherein the appeal was struck out and the file closed. The said application also seeks to have the appeal reinstated and heard on merit.
2. The application is premised on the grounds that:-
  - a. On 28<sup>th</sup> April 2025 this matter was mentioned at the court for directions and the Appellant's advocate explained that the record of appeal had been served to the Respondents through the Newspaper.
  - b. The matter was slated for mention on 20<sup>th</sup> May 2025 however the Advocate for the Appellant recorded the date as 28<sup>th</sup> May 2025.
  - c. On 20<sup>th</sup> May 2025 the matter was mentioned to confirm whether the in person service had been conducted.
  - d. The matter was dismissed for want of prosecution on the 20<sup>th</sup> May 2025 because the Respondent was not in court.



- e. The Advocate of the Respondent appeared on 28<sup>th</sup> May 2025 as he had recorded but the matter had already been thrown out of court.
  - f. The mistake arose from what the advocate heard and was not intended in any way.
  - g. The Applicant, who is also the Appellant is ready to proceed with the case and has completed and served the basic pleadings including the record of appeal.
  - h. The absence of the advocate at the point when the matter was mentioned was not a fault of the Applicant who desires for justice in the matter.
  - i. The Appellant has only this parcel of land and she is of very mature age, the court should have mercy on her to have her date in court.
  - j. It is in the interests of justice and fairness that both parties are heard and a resolution to their case is granted.
3. The application is also supported by the affidavit sworn by Zedekiah Adika Advocate on the 28<sup>th</sup> May 2025.
  4. The application was opposed vide the grounds of opposition dated 23<sup>rd</sup> September 2025 which was to the effect that the application is incomplete as it is brought under inapplicable rules of Civil Procedure and no sufficient cause has been shown by the Applicant for the appeal to be re-admitted.
  5. In respect to the said application and pursuant to the directions issued by this court, parties were directed to file written submissions in respect to the said application. A perusal of the court record on the Case Tracking System (CTS) only confirmed that the 1<sup>st</sup> Respondent was the only party who filed his written submissions dated 9<sup>th</sup> October 2025. No submissions were filed by the Applicant.
  6. It was submitted that the Applicant has invoked Order 12 Rule 6 and 7 of the Civil Procedure Rules which strictly apply to suits dismissed for non attendance at the hearing and not on Appeals before this court.
  7. It was also submitted that there is no sufficient cause shown for reinstatement of the suit. The Appeal was dismissed on 20<sup>th</sup> May 2025 for non attendance yet the Counsel for the Applicant stated that he recorded a date of 28<sup>th</sup> May 2025. The said application was lodged on 27<sup>th</sup> July 2025 two months later and that the Applicant does not deserve court's discretion be served in his favour. The court was urged to dismiss the application with costs.
  8. I have considered the application and the main issue falling for determination is whether this Court should set aside its orders of 20<sup>th</sup> May 2025 dismissing the appeal and reinstate the same.
  9. Counsel for the Appellant Mr. Adika urged the Court not to punish the Appellant for its own mistake having misdiarized the hearing dates of 28<sup>th</sup> May 2025 instead of 20<sup>th</sup> May 2025. While Counsel for the Appellant submitted that the application was incompetent having been brought under the wrong rules and further that the same was filed two months later.
  10. A perusal of the Court record shows that the said application was filed on 30<sup>th</sup> May 2025 after the dismissal of the appeal on 20<sup>th</sup> May 2025 and as such the contention that the same was filed two months later is misplaced.
  11. As to whether the Applicant cited wrong rules of the Civil Procedure, it is worth noting that the substantive prayers sought in the application are clear as they seek for setting aside the orders of this



court and reinstating the appeal. Further the 1<sup>st</sup> Respondent has not demonstrated any prejudice suffered in that aspect.

12. It is worth noting that in this era of e-filing that was officially launched by the Judiciary on 1<sup>st</sup> July 2020 the e-filing court systems usually sends parties automated notifications either emails or Short Message Services (SMS) notifying parties of upcoming court dates and any changes in the schedule. Parties have always been urged time without number to embrace the said technology. The proceedings that Counsel for the Appellant seeks to set aside were definitely post the launch/commencement of court's e-filing system.
13. Learned Counsel Adika owned up to the mistake and urged the court not to visit the mistake on the litigant in the interest of justice and allow the application and have proceedings set aside and allow the Appeal to be heard on merit. The Court also notes that the Appellant promptly moved the Court after the Appeal had been struck out and as such the said action demonstrated the need to have the Appeal reinstated.
14. In conclusion, and for the interest of justice, the application dated 27<sup>th</sup> May 2025 is hereby determined in the following terms:-
  - i. The Appellant's Advocate Zedekiah Adika is hereby ordered to pay throw away costs of Kshs. 10,000/= to the 1<sup>st</sup> Respondent.
  - ii. The orders issued on 20<sup>th</sup> May 2025 are hereby set aside and the said Appeal is hereby reinstated for determination on merit.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN VIRTUALLY AT VOI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Ms. Maveke h/b for Mr. Adika for the Appellant.

Ms. Manyara h/b for Mr. Omolo for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> Respondent.

Court Assistant: Mary Ngoira.

