



Kishushe Ranching Co-operative Society Limited Ngolia “B” Kishushe Mining Group (Suing through their registered officials Oliver Mwadime (Chairman), Milton Mghenyi (Secretary) and Dalton Mshambala (Treasurer)) v Mwaruwa & 10 others (Environment and Land Case E001 of 2023) [2025] KEELC 7397 (KLR) (Environment and Land) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE E001 OF 2023
EK WABWOTO, J
OCTOBER 30, 2025**

BETWEEN

**KISHUSHE RANCHING CO-OPERATIVE SOCIETY LIMITED NGOLIA “B”
KISHUSHE MINING GROUP PLAINTIFF**

**SUING THROUGH THEIR REGISTERED OFFICIALS OLIVER MWADIME
(CHAIRMAN), MILTON MGHENYI (SECRETARY) AND DALTON
MSHAMBALA (TREASURER)**

AND

**JONES MWARUWA 1ST DEFENDANT
ELISTONE MWANDAWIRO MBELA 2ND DEFENDANT
TRIANNAH MWANDANGO 3RD DEFENDANT
DANSON KIDAI MWANDOTO 4TH DEFENDANT
HOLTAN MAGHANGA 5TH DEFENDANT
ELIZABETH MWAISAKA 6TH DEFENDANT
LITYLTONE MAGHANGA 7TH DEFENDANT
MERCY NYAMBU 8TH DEFENDANT
DCIO WUNDANYI POLICE STATION 9TH DEFENDANT
DCC WUNDANYI SUB-COUNTY 10TH DEFENDANT
ATTORNEY GENERAL 11TH DEFENDANT**



RULING

1. The Plaintiffs herein have approached this court vide their application dated 22nd July 2025 seeking for the following reliefs:-
 - i. Spent...
 - ii. THAT the Order made on 4th June 2025 dismissing the suit herein for want of prosecution and non-attendance by the Plaintiffs be set aside
 - iii. THAT the suit be reinstated for hearing and determination on such conditions as the honourable court may find just to set.
 - iv. THAT the costs of this application be in the cause.
2. The application was premised on various grounds which have been outlined on the face of the application. The application is also supported by the affidavit sworn by Milton Mghenyi Mombo on the 22nd July 2025.
3. The application is opposed by the 1st to 8th Defendants vide a Replying Affidavit sworn on 18th September 2025 by McMillan Edwin Jengo Advocate.
4. When the application came for hearing on 16th September 2025, the Court directed the same to be canvassed by way of written submissions. In compliance with this directive, the Plaintiffs filed written submissions dated 29th September 2025 while the 1st to 8th Defendants filed written submissions dated 15th October 2025.
5. The Plaintiff submitted on the main issue being whether the suit dismissed on 4th June 2025 for want of prosecution should be reinstated.
6. Citing Order 17 Rule 2 of the Civil Procedure Rules, 2010 and the cases of Japheth Olumbe =Versus= Henry Obanyi (2025) eKLR, Nzoia Sugar Company Ltd =Versus= West Kenya Sugar Limited (2020) KLR, Kurji & 4 Others =Versus= Kurji & 3 Others (2024) 882 (KLR) and Shah =Versus= Mbogo (1967) EA 116, it was argued that the facts to be considered in an application for reinstatement of a dismissed suit for want of prosecution include;
 - a. Whether the delay is prolonged and inexcusable.
 - b. Whether justice can be done despite the delay.
 - c. Justice for both sides must be considered.
 - d. Whether the other side would be prejudiced by reinstatement.
 - e. The reasons given for the delay.
7. It was submitted that the suit herein was filed in 10th July 2023 by the Applicants and on 11th July 2023 it was earmarked for certificate of urgency hearing where directions were issued and the Applicants through their previous counsel on record, took all steps necessary to prosecute the matter between 11th July 2023 to 20th February 2025. On 4th March 2025, the Counsel previously on record ceased acting for the Applicants and the Applicants did not attend court on the 26th March 2025 and on 4th June 2025 when the matter was dismissed for want of prosecution.



8. The delay from 4th June 2025 to 22nd July 2025 is excusable and not inordinate for the reasons that the Applicants are a Cooperative Society and therefore they must follow their bylaws before taking legal steps and/or appointing an Advocate which is time-consuming. Therefore upon the previous counsel ceasing to act and urgency of the matter at hand the Applicants only managed to convene and instruct the new counsel to handle the matter at their earliest opportunity but their actions were too late since the matter had been dismissed for want of prosecution and non-attendance.
9. The delay occasion of approximately 48 days is thus excusable and not inordinate given the circumstances. Counsel made reference to the Halsbury's Laws of England, 4th Edition Vol. 37 at paragraph 448 which states as follows:

“ the power to dismiss an action for want of prosecution will not be exercised unless the Court is satisfied that the default has been intentional and contumelious; or that there has been prolonged or inordinate delay on the part of the Plaintiff that is not possible to have a fair trial for issues in the action or such as likely to cause prejudice to the Defendant.”
10. It was further submitted that justice for both parties can be dispensed despite the delay because the issues at hand and which concern suit herein shall be heard and determined on merit and conclusively so, it was contended that the delay is also not prolonged thereby less likely to compromise the integrity of the evidence. Moreover, no party will be prejudiced by the reinstatement because it will afford both parties an opportunity to have their case heard and determined on merit.
11. The Court was urged to exercise its discretion and reinstate the suit for hearing and determination.
12. The 1st to 8th Defendants submitted that the suit was filed on 11th July 2023. The Plaintiffs were not present on 28th September 2023, 4th March 2024, 19th September 2024, 20th November 2024, 26th March 2025 and 4th June 2025 when the matter was dismissed for non-attendance and hence they were not diligent in prosecuting the suit herein.
13. It was also submitted that the Plaintiffs' previous Counsel on record had deponed that the Plaintiffs were not cooperating in the prosecution of the case.
14. Citing the cases of Habo Agencies Ltd =Versus= Wilfred Odhiambo Nairobi C.A (Application) No. 124 of 2024, Patriotic Guards Ltd =Versus= James Kipchirchir Sambu (2018) eKLR and Wachira Karani =Versus= Bildan Wachira, Nyeri HCCC No. 101 of 2011, it was argued that the Plaintiffs other than saying that they were in the process of appointing a new Advocate for 3 months have not stated why they were not in court on the material day when the suit was dismissed and as such the said application ought to be dismissed.
15. The 1st to 8th Defendants also submitted that the Court should consider whether there is any merit in the case before it can be reinstated since the dispute herein is before the Cooperative Society members and thus pursuant to Section 76(1) of the Cooperative [Societies Act](#) the same ought to be referred to the Cooperative Tribunal in the first instance.
16. Having considered the application and written submissions filed by the parties, the salient issue for determination herein is whether the Plaintiffs have established and demonstrated sufficient cause to warrant the grant of the reliefs sought.
17. There is no gain saying that this suit was fixed for hearing on 4th June 2025. It is also common ground that when the same was called out for hearing, the Plaintiffs Advocate was not present neither was any representation from them. Learned Counsel Mr. Jengo who was present for the 1st to 8th Defendants



confirmed his readiness to proceed and in the absence of the Plaintiffs he moved the court to dismiss the suit for want of prosecution a request which was duly granted by the Court.

18. Be that as it may, the Plaintiffs have now approached this court seeking to have the suit reinstated.
19. Having considered the record of the Court, it is evident that the Plaintiffs have not been diligent in prosecuting this matter.
20. To start with, there is no gainsaying that any party, the Applicants not excepted, who are desirous to partake of and benefit from the equitable discretion of the court must be truthful, honest and candid. For good measure, such an Applicant must not indulge in deceit, dishonesty and intentional misrepresentation of facts.
21. Secondly, it is also important to underscore that an Applicants desirous to invoke and benefit from equity must also be prepared to do equity. At any rate, equity frowns upon a person who approaches equity albeit with unclean hands.
22. Thirdly, where the discretion of the court is being sought, it is incumbent upon the Applicants to lay before the court all the facts including those facts that may be adverse and hostile to the interest of the Applicants.
23. Taking into the account the foregoing analysis, the question that this court must grapple with is whether the Applicants herein have genuinely placed before the court the reasons as to why same [Applicants] did not attend the scheduled hearing in the manner captured in the record of the court.
24. I am afraid that the deposition by the Applicants and which is being deployed to attract the discretion of the court are misleading and perjurious. Suffice it to underscore that where the explanation and or reasons being relied upon leave doubt in the mind of the court as to its bona fides, then the court must decline to exercise its discretion in favour of the Applicants.
25. I beg to state that sufficient cause can only be shown and demonstrated where the Applicants are truthful and honest with the court. On the contrary, sufficient cause is defeated and negated by dishonesty and lack of candour.
26. As to what constitutes sufficient cause, it suffices to cite and reference the case of *The Hon. Attorney General v The Law Society of Kenya & Another – Civil Appeal (Application) No. 133 of 2011*; wherein the Court of Appeal observed and stated as follows:

“Sufficient cause or good cause in law means:-

‘The burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused.’ See *Black’s Law Dictionary*, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

27. The necessity to proffer and espouse plausible reasons in an endeavour to procure discretion of the court was also highlighted in the case of *Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) (Ruling)*; where the Court of Appeal [per Matico, JA] stated thus:

12 .In order to exercise its discretion whether or not to grant condonation, the court must be appraised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An



unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success. Condonation cannot be had for the mere asking. An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.

13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.
28. In the instant case the Applicants have not given any reasons as to why they did not attend court on the several days listed on record. The explanation offered that the delay of 48 days in filing the instant application on the basis that they were consulting on the need to engage another Counsel is equally not plausible. It is worth noting that a party who has brought a claim before a court should always be diligent in prosecuting the matter and hence 48 days taken to appoint a Counsel is inordinate and shows the lack of commitment that the Applicants had in the matter. Cases belong to litigants and not Advocates. A litigant has a duty to pursue the prosecution of his or her case. It is the duty of the litigant to constantly check with her advocate the progress of her case. In the present case, it appears that the Applicants only chose to move the Court after the dismissal of their suit. Nothing stopped the Plaintiffs from attending Court with or without Counsel on 28th September 2023, 4th March 2024, 19th September 2024, 20th November 2024, 26th March 2025 and 4th June 2025 when the matter was dismissed for non-attendance.
29. Arising from the foregoing analysis, I come to the conclusion that the Applicants herein have neither established nor demonstrated sufficient cause.
30. In view of the foregoing, this Court is unable to exercise its discretion in favour of the Plaintiffs/Applicants in granting the reliefs sought.
31. Having made the foregoing, the final orders that commend themselves to the Court are as hereunder: -
 - i. The application dated 22nd July 2025 be and is hereby dismissed.
 - ii. Each party to bear own costs of the said application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THE 30TH DAY OF OCTOBER 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mutinda for the Plaintiffs/Applicants.

Mr. Kioko for the 1st to 8th Defendants/Respondents.

N/A for the 9th to 11th Defendants/Respondents.

Court Assistant: Mary Ngoira.

