



Kimuri Housing Company Limited & another v Skys Displays Limited & 3 others; Gallant Worldwide Auctioneers (Interested Party) (Environment and Land Case 513 of 2014) [2025] KEELC 7272 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7272 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 513 OF 2014
OA ANGOTE, J
OCTOBER 23, 2025**

BETWEEN

KIMURI HOUSING COMPANY LIMITED 1ST PLAINTIFF

MARGARET WAMBUI NGUGI 2ND PLAINTIFF

AND

SKYS DISPLAYS LIMITED 1ST DEFENDANT

KARING’U T/A KARINGU & CO ADVOCATES 2ND DEFENDANT

ROBERT TIMOTHY GACHECHEH 3RD DEFENDANT

ASSOCIATED RESOURCE MANAGERS LIMITED 4TH DEFENDANT

AND

GALLANT WORLDWIDE AUCTIONEERS INTERESTED PARTY

RULING

1. Before this court is the Plaintiff’s Notice of Motion application dated 15th May 2025 brought pursuant to Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 46 Rule 6(2) of the Civil Procedure Rules and Articles 50 and 2(4) of *the Constitution*. The Plaintiffs are seeking the following orders:
 - a. That this Honourable Court be pleased to grant leave for the firm of SNW & Company Advocates to come on record on behalf of the Plaintiffs/Applicants post judgment.
 - b. That this Honourable Court be pleased to allow the reinstatement of the main suit herein and the Plaintiffs/Applicants be granted a chance for fair hearing as per the provisions of Article 50 of *the Constitution* of Kenya 2010.



- c. That costs of this application be provided.
2. The application is supported by the affidavit of Margaret Wambui Ngugi, the 2nd Plaintiff and Managing Director of the 1st Plaintiff. She deponed that on 12th May 2025, she was served with a proclamation and warrants of attachment.
 3. It is her deposition that pursuant to a decree of this Court dated 2nd March 2022, she was ordered to pay the 1st Defendant the sum of Kenya Shillings Seven Million, Three Hundred and Seventy-Three Thousand, Nine Hundred and Ten (Kshs. 7,373,910).
 4. Ms. Ngugi averred that she was not aware of the Bill of Costs filed against her. According to her, her previous advocates had ceased acting in the matter and the orders issued by the Court were made in her absence. Consequently, she deposed, she did not have an opportunity to defend the application for taxation by the 1st Defendant.
 5. It was her deposition that the 1st Defendant served the Bill of Costs upon the firm of J.M. Njenga, who in turn informed the 1st Defendant that they had ceased acting and that they allegedly directed that service be effected upon the firm of Laichena Mugambi & Ayieko Advocates who were allegedly on record on the Plaintiffs' behalf.
 6. Ms. Ngugi denied ever instructing the firm of Laichena Mugambi & Ayieko to act for her in these proceedings. She stated that this information came to her as a surprise. She maintained that she was unaware of the taxation proceedings adding that she had been unwell for some time which had hindered her former advocates from obtaining instructions from her.
 7. The 2nd Plaintiff contended that service of the Bill of Costs upon the wrong parties rendered the ensuing proceedings and orders invalid. She asserted that she was denied the right to a fair hearing guaranteed under Article 50 of the Constitution and that the sum of Kshs. 7,373,910 taxed as costs is excessive.
 8. The application was opposed by the 1st Defendant through a Replying Affidavit sworn on 20th May 2025 by Sylvester Kibera Maina, the 1st Defendant's Advocate practicing in the name and style of M/S Kibera & Associates Advocates.
 9. He deponed that on 24th May 2023, the 1st Defendant's advocates filed a Party and Party Bill of Costs dated the same day and served it upon the firm of M/S J.M Njenga & Co. Advocates then on record for the Plaintiffs, by way of email dated 26th May 2023. An Affidavit of Service was subsequently filed on 29th May 2023.
 10. Mr. Maina further deponed that on 26th June 2023, he served the Notice of Taxation dated the same day upon the firm of M/S J.M. Njenga & Co. Advocates via email, and filed an Affidavit of Service confirming the same. He stated that on 29th August 2023, he received an email from the said firm indicating that they were no longer on record for the Plaintiffs and that they had been served with a Notice of Change of Advocates by the firm of M/S Laichena Mugambi & Ayieko Advocates.
 11. According to Mr. Maina, on 29th August 2023, service of the 1st Defendant's Party and Party Bill of Costs dated 24th May 2023 together with the Notice of Taxation was effected upon the firm of M/S Laichena Mugambi & Ayieko Advocates. He deponed that on 19th September 2023, his firm also served upon the Plaintiffs' Advocates the Ruling Notice dated the same day and filed an Affidavit of Service dated 20th September 2023.



12. Despite the said service, it was his contention that the Plaintiffs failed, refused and/ or neglected to take part in the proceedings either in person or through their representatives. Consequently, the 1st Defendant's Bill of Costs was taxed on 27th October 2023 and a Certificate of Taxation was issued on 11th April 2024.
13. It was the 1st Defendant's case that the Plaintiffs were duly aware of the Bill of Costs and all subsequent proceedings, having been served with the same as well as with all attendant notices. Their failure to act was, in his view, deliberate and inexcusable.
14. Mr. Maina pointed out that the Plaintiff's former advocates had confirmed to his firm that they had been served with a Notice of a Change of Advocates by the firm of M/S Laichena Mugambi & Ayieko Advocates, and that this was further confirmed through the court's e-filing system. It was therefore his contention that the Plaintiffs' conduct amounts to an abuse of the court process, and that their present application is intended only to frustrate the execution of the taxed costs awarded by this Court.
15. In a Further Affidavit, Margaret Wambui Ngugi reiterated that she is an elderly citizen who has been unwell since 2022 and has been in and out of hospital owing to high blood pressure. She deponed that due to her illness, her former advocates on record were unable to obtain further instructions from her, before the suit was dismissed for want of prosecution by this Court.
16. She maintained that after her former advocates filed a Notice to Cease Acting which was duly allowed by the Court, she has never appointed any other advocates to act on her behalf. She expressly denied instructing the firm of M/S Laichena Mugambi & Ayieko. According to her, the said firm never filed any documentation on the e-filing platform, and the alleged Notice of Change of Advocates cannot be traced on the Court's e-filing system.

Submissions

17. Plaintiffs' Counsel submitted that this suit was instituted vide a Further Amended Plaint dated 18th March 2019, to which the Defendants filed a Further Statement of Defence dated 21st September 2020 and that the matter was subsequently fixed for hearing on 16th February 2022.
18. However, it was submitted, due to the ill-health of the 2nd Plaintiff, her then Advocates were unable to obtain further instructions from her. Counsel stated that the said Advocates subsequently filed an application to cease acting, which was allowed and that the suit was thereafter dismissed with costs, upon which the 1st Defendant proceeded to file the Party and Party Bill of Costs dated 24th May 2023.
19. Counsel submitted that the Applicants were never served with the said Bill of Costs by the 1st Defendant, nor were they ever served with a Notice of Change of Advocates by the firm of M/S Laichena Muambi & Ayieko Advocates. It was argued that service ought to have been effected directly upon the Applicants which was not done.
20. Reliance was placed on Order 10 Rule 11 of the Civil Procedure Rules 2010, which grants the Court discretion to set aside or vary a judgment entered under that Order, and on Order 12 Rule 7 which empowers the court to set aside or vary a judgment entered, or a suit dismissed, for non-attendance.
21. Counsel urged the Court to exercise its discretion to set aside the ruling on taxation of the Party and Party Bill of Costs by the 1st Defendant for lack of proper service on the Applicants.
22. Further, it was urged that the main suit ought to be reinstated, the same having been dismissed before the Applicants were granted an opportunity to be heard contrary to Articles 50 and 159 of *the Constitution*. Reliance was placed on Philip Kiptoo Chemwolo & Another vs Augustine Kubende



[1986] eKLR and John Nahashon Mwangi vs Kenya Finance Bank Limited (In liquidation) [2015] eKLR.

23. In response, learned Counsel for the 1st Defendant submitted that there was proper service of the Bill of Costs and all subsequent notices upon the Plaintiffs, through their duly recognized Advocates on record, namely M/S Laichena Mugambi & Ayieko Advocates.
24. It was Counsel's submission that the Plaintiffs were not truthful in claiming ignorance of the taxation proceedings, as the Bill of Costs and Notice of Taxation were first served through their former Advocates, M/s J.M. Njenga & Co. Advocates, on 26th June 2023, and Affidavits of Service were duly filed as proof.
25. Counsel pointed out that on 29th August 2023, the said Advocates confirmed via email that they were no longer on record and that they had been served with a Notice of Change of Advocates dated 11th May 2022 by the firm of M/S Laichena Mugambi & Ayieko Advocates.
26. It was further submitted that the Bill of Costs, Notice of Taxation and the Ruling Notice dated 19th September 2023 were thereafter served upon the firm of M/S Laichena Mugambi & Ayieko Advocates and the Affidavits of Service filed to that effect. Counsel pointed out that the Bill of Costs was taxed on 27th October 2023 and a Certificate of Taxation was issued on 11th April 2024.
27. On the question of reinstatement of the main suit, Counsel submitted that the Plaintiffs were accorded sufficient time and opportunity to present their claim, but failed to do so, which was noted by this court in its ruling of 2nd March 2022 when it dismissed the suit for want of prosecution.
28. It was submitted that a party seeking reinstatement of a dismissed suit must demonstrate good faith and bring the application without unreasonable delay. Reliance was placed on Article 159(2)(b) of *the Constitution* which enjoins courts to ensure that justice is not delayed.
29. Counsel submitted that no explanation has been given for the delay of three years before seeking reinstatement, and argued that the present application is merely an afterthought brought only after execution of the taxed costs had commenced.
30. Counsel concluded that equity aids the vigilant not the indolent. He submitted that the Plaintiff's conduct demonstrates a lack of interest in prosecuting their claim and a deliberate attempt to abuse the court process and frustrate execution of lawful costs awarded to the 1st Defendant.

Analysis and Determination

31. Having considered the application, the replies and the rival submissions by Counsel, the issues for determination are as follows:
 - a. Whether leave should be granted to the firm of M/s SNW & Company Advocates to come on record for the Plaintiffs after judgment.
 - b. Whether the main suit should be reinstated.
32. Although the Plaintiffs have made extensive reference to the taxation proceedings in the present application, no specific prayer has been sought for the setting aside of the ruling of the Taxing Master delivered on 19th September 2023.
33. The first issue is whether this Court ought to grant leave to the firm of SNW & Company Advocates to come on record for the Plaintiff after judgment. The law is settled that a litigant is entitled to legal representation by an Advocate of their choice. However, where judgment has already been entered, a



change of Advocates can only be effected with leave of the court. This is provided for under Order 9 Rule 9 of the Civil Procedure Rules thus:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- a. upon an application with notice to all the parties; or
- b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

34. The rationale for the requirement of leave where a party seeks to change advocates after judgment was aptly stated by the Court of Appeal in the case of Tobias M. Wafubwa vs Ben Butali [2017] KECA 142 (KLR) where the Court observed thus:

“Once a judgment is entered, save for matters such as applications for review or execution or stay of execution inter alia, an appeal to an appellate court is not a continuation of proceedings in the lower court, but a commencement of new proceedings in another court, ... Parties should therefore have the right to choose whether to remain with the same Counsel or to engage other Counsel on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous Advocate.”

35. In expounding the import of Order 9 rule 9, the Court, in the case of Kazungu Ngari Yaa vs Mistry V Naran Mulji & Co. [2014] eKLR, the court observed as follows:

“The provision envisages two different scenarios and the only commonalities are that there has been a Judgment and previously, there was advocate on record. In first scenario under rule 9(a), the new advocate or the party in person makes a formal application to the court with a notice to all parties who participated in the suit for grant of leave to come on record or act in person. Under this first scenario, the consent of the previous advocate is not necessary, but what a party must do is give notice to the other parties and then satisfy the Court to grant it leave for another advocate to come on record or to act in person. In the second scenario under Rule 9(b), the new advocate or party in person needs to secure the written consent of the previous advocate on record, file the consent in Court and then seek leave to come on record. My understanding of the second scenario under Rule 9(b) is that a formal written application is not necessary and that once the written consent has been filed, an oral or informal application would be sufficient to move the Court.”

36. It is not in dispute that this suit was dismissed for want of prosecution on 22nd March 2022, and that at the time of the judgment, this Court allowed the application by the Plaintiff’s former advocates to cease acting. As such, the prayer to come on record by the firm of SNW and Company Advocates falls within the parameters of Order 9 Rule 9 of the Civil Procedure Rules.

37. In the present application, the Plaintiff seeks leave of the Court to have her new Advocates to come on record. The Court is mindful that the right of a litigant to legal representation by an Advocate of their choice is not only anchored in statute but also in *the Constitution*.



38. From the record, it is evident that the Plaintiff has complied with the procedure prescribed under the law. No objection has been raised to the change of Advocates sought. In the circumstances, this court finds no reason to decline the request. The prayer is accordingly allowed.
39. The next issue for determination is whether the suit ought to be reinstated. The prayer has been anchored on Order 10 Rule 11 and Order 12 Rule 7 of the Civil Procedure Rules, both of which vest in this Court the discretion to set aside a judgment entered in default or to reinstate a suit dismissed for non-attendance, upon such terms as may be just.
40. Order 10 Rule 11 of the Civil Procedure Rules provides that:
- “Where judgment has been entered under this order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.”
41. Order 12 rule 7 of the Civil Procedure Rules, 2010 stipulates 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.”
42. The import of the above provisions is that an application for reinstatement of a dismissed suit calls upon the Court to exercise its discretion judiciously. That discretion is not designed to assist a litigant who has deliberately sought to obstruct or delay the course of justice. Rather, its purpose is to prevent hardship arising from accident, inadvertence, or an excusable mistake or error. This position was underscored by the Court of Appeal in *Shah vs Mbogo & Another* (1967) EA 116, where it was held that:
- “The discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.”
43. More recently, the Court of Appeal in *Richard Ncharpi Leiyagu vs Independent Electoral Boundaries Commission & 2 others* [2013] eKLR, stated:
- “We agree with those noble principles which go further to establish that the court's discretion to set aside an exparte judgment or order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or inexcusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice. We have considered the reasons that were offered by the appellant regarding their failure to attend court on June 10, 2013 with anxious minds. We have asked ourselves whether failure to attend court on June 10, 2013, constituted an excusable mistake, an error of judgment regarding counsel's failure to diarize the date properly or was it meant to deliberately delay the cause of justice. The appellant and his counsel failed to attend Court on June 10, 2013; they, nonetheless, made it to court on June 11, 2013, and promptly offered an apology and explanation and offered to proceed with the petition on June 11, 2013, which date was reserved for the appellant's case...We are of the view that the learned judge misapprehended the reasons given for non-attendance which arose as a result of a mistake.”



44. The law is settled that the discretion of the Court must be exercised judiciously and on sound principles, and not on the whims of the Judge. The Court of Appeal in *Patriotic Guards Limited vs James Kipchirchir Sambu* [2018] eKLR underscored this position in the following terms:

“...It is settled law that whenever a court is called upon to exercise its discretion, it must do so judiciously and not on caprice, whim, likes or dislikes. Judicious because the discretion to be exercised is judicial power derived from the law and as opposed to a judge’s private affection or will. Being so, it must be exercised upon certain legal principles and according to the circumstances of each case and the paramount need by the court to do real and substantial justice to the parties in a suit...”

45. In considering an application for reinstatement of a suit, the Court is enjoined to determine whether the applicant has shown sufficient cause to justify the exercise of discretion in their favour. The Court of Appeal in *Hon Attorney General vs the Law Society of Kenya & Another*, Civil Appeal (Application) No. 133 of 2011 (unreported) defined what amounts to sufficient cause in the following terms:

“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 doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

46. The question that therefore arises is whether the reasons advanced by the Plaintiffs are reasonable, and whether they amount to sufficient cause to warrant the grant of the orders sought.

47. The 2nd Plaintiff’s position is that she is elderly and has been unwell since 2022. Owing to her condition, her former Advocates were unable to obtain further instructions from her, leading to the dismissal of the suit for want of prosecution.

48. However, no medical evidence has been tendered to substantiate this claim. While the Court is not unmindful of the frailties that come with age and ill-health, such averments must be supported by cogent proof when relied upon to excuse delay of this magnitude.

49. It is also not disputed that the Plaintiffs’ Advocates on record filed an application to cease acting, which was allowed by the Court. Once counsel had ceased acting, the responsibility to take appropriate steps to appoint another Advocate or to appear in person lay squarely on the Plaintiffs. That duty was not discharged. A litigant cannot fold her arms after her Advocate withdraws from acting and later seek to shift the entire burden of their own inactivity.

50. This application was filed three years after the dismissal of the suit. No plausible explanation has been proffered for this inordinate delay. Litigation must come to an end. To permit reinstatement of the suit after such a delay, without sufficient explanation, would prejudice the Defendant who has already pursued execution of the taxed costs, and would undermine the constitutional dictate under Article 159(2)(b) that justice shall not be delayed.

51. While the 1st Defendant produced a Notice of Change of Advocates allegedly filed by the Plaintiffs’ advocate after the suit was dismissed, the record shows that no application was made under Order 9 Rule 9 of the Civil Procedure Rules seeking leave of the Court, nor was any consent between the outgoing Advocate and the proposed incoming Advocate placed on record.



52. Strictly speaking, therefore, the firm was not properly on record for the Plaintiffs. While the Court notes this irregularity, no specific relief has been sought in the present application regarding the validity of the said Notice of the Taxation proceedings that followed, and this court shall say no more on the matter.
53. The upshot of the foregoing is that the Plaintiffs have failed to show sufficient cause to warrant the reinstatement of the suit. The Motion dated May 15, 2025 is found to be partially merited in the following terms:
- i. Leave be and is hereby granted to the firm of SNW & Company Advocates to come on record for and on behalf of the Plaintiffs post judgement.
 - ii. The prayer for reinstatement of the suit is disallowed.
 - iii. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23RD DAY OF OCTOBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Wanyingi holding brief for Ndegwa for Plaintiff/Applicant

Mr. Kibera for 1st Respondent

Court Assistant: Tracy

