



REPUBLIC OF KENYA



Sodawalla v Bhaiji & 2 others; Gohil (Interested Party) (Environment and Land Case E053 of 2023) [2025] KEELC 7561 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E053 OF 2023**

**YM ANGIMA, J
OCTOBER 30, 2025**

BETWEEN

RUHI ASGAR HUSSEINBHAI SODAWALLA PLAINTIFF

AND

NAHEED ADNAN BHAIJI 1ST DEFENDANT

ALI ICQBAL SADAKALI JIWAJI 2ND DEFENDANT

IQUALBAL SADAKALI JIWAJI 3RD DEFENDANT

AND

JYOTIBALLA RANCHOL GOHIL INTERESTED PARTY

RULING

1. By a notice of motion of motion dated 26.05.2025 filed pursuant to Sections 1A, 1B, 3A, 68 and 80 of the Civil Procedure (Cap 21), Order 45 and Order 51 Rule 1 of the Civil Procedure Rules, the inherent jurisdiction of the court, and any other enabling provisions of the law, the intended interested party (the applicant) sought the review and setting aside of the order made on 26.05.2025 dismissing her application dated 25.04.2025. She sought to have it reinstated for hearing on merit.
2. The application was based on the grounds set out on face of the motion and the contents of the supporting affidavit sworn by the applicant on even date. The gist of the application was that the failure of the applicant's advocate to attend the virtual court on 26.05.2025 was not deliberate but was due to technical difficulties in consequence whereof the advocate logged in after the application dated 25.04.2025 had been called out and dismissed. It was contended that her application for reinstatement was filed in good faith and without undue delay.
3. The application was vehemently opposed by the plaintiff, the 1st defendant and the 2nd defendant who filed replying affidavits in response thereto. They doubted the genuineness of the applicant's



explanation for her advocate's absence on 26.05.2025. In particular, it was contended that the applicant had not disclosed the specific nature of technical difficulties encountered by her advocate in logging into the virtual court. The applicant's advocate was also faulted for not having an alternative or emergency gadget for logging into the virtual session. The rest of the objections went into the merits of the joinder application which was dismissed on 26.05.2025.

4. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the parties who filed submissions were the plaintiff, the 1st defendant and the 2nd defendant. The 3rd defendant did not file any response or submissions to the application.
5. The court has considered the application dated 26.05.2025, the affidavits in opposition thereto as well as the material on record. The court is of the view that the main question for determination is whether or not the applicant has made out a case for setting aside the dismissal order made on 26.05.2025 and reinstatement of the dismissed application. The ancillary issue is the question of costs.
6. The court has considered the material and submissions on record. The sole ground upon which the application is based is the alleged technical difficulties the applicant's advocate is said to have encountered in trying to log not the virtual court on 26.05.2025. The parties opposing the application have cast doubt on the genuineness of the explanation given for the applicant's default.
7. The court is of the view that the explanation tendered by the applicant, if true, can be a perfectly good reason for excusing her default in attendance on the material date. There is no material on record which may lead the court to conclude that the applicant's explanation is not genuine. There is no demonstration that the applicant and her advocate are known or habitual liars. There is no indication that the application was filed in bad faith in order to delay, defeat or obstruct the course of justice. On the contrary, the applicant has demonstrated some sort of good faith by filing the instant application expeditiously.
8. The court is of the opinion that a party should not be shut out of legal proceedings on account of default of attendance where there is a reasonable explanation for such default. The court does not agree that the application should fail merely because the applicant failed to pin point the nature of the technical challenge her advocate encountered on the material date with particularity. Sometimes a person may not be able to discover the exact nature of the technical issue which may prevent or delay him from logging into a virtual platform. In some cases, one has to make several attempts before successfully logging in. Sometimes one has to restart his electronic gadget to enable him resolve an initial technical failure.
9. The upshot of the foregoing is that the court is satisfied that the applicant has made out a case for review and setting aside of the dismissal order made on 26.05.2025 and consequent reinstatement of the earlier motion dated 26.04.2025 for hearing on merit. As a result, the court makes the following disposal orders;
 - a. The dismissal order made on 26.05.2025 is hereby reviewed and set aside.
 - b. The applicant's notice of motion dated 25.04.2025 is hereby reinstated for hearing on merit.
 - c. Any party wishing to oppose the motion dated 25.04.2025 shall file and serve a response thereto within 14 days from the date hereof.
 - d. The applicant shall file and serve her submissions and further affidavit, if necessary, with 14 days upon service of responses.



- e. The respondents to the application shall file and serve their submissions within 14 days upon the lapse of the applicant's period.
- f. The matter shall be mentioned on 17.02.2026 to confirm compliance and fix a ruling date.
- g. Costs of the application shall be in the cause.

Orders accordingly

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 30TH DAY OF OCTOBER 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

No appearance for the plaintiff

Ms. Nzisa for the 1st defendant

Ms. Wasike for the 2nd defendant

No appearance for the 3rd defendant

Mr. Arunga for the intended interested party.

