



Mahindu & 5 others v Trans-Nzoia County Government & 2 others (Constitutional Petition 4 of 2018) [2025] KEHC 15980 (KLR) (13 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CONSTITUTIONAL PETITION 4 OF 2018
PJO OTIENO, J
OCTOBER 13, 2025**

BETWEEN

SAMUEL MAHINDU & 5 OTHERS & 5 OTHERS APPLICANT

AND

TRANS-NZOIA COUNTY GOVERNMENT 1ST RESPONDENT

THE FINANCE COUNTY EXECUTIVE 2ND RESPONDENT

THE TRANNS-NZOIA COUNTY GOVERNOR 3RD RESPONDENT

RULING

1. Before the court for its determination is the Notice of Motion dated the 19th April 2024 seeking that the court be pleased to set aside its orders made on the same day, as the application, dismissing the petition. The reasons advanced to found the application is that, on the material day the matter was set for notice to show cause why the petition would not be dismissed, the counsel logged onto the system at 8.00am but her call dropped at about 8.10 and that when she was able to login again by 8.18, the matter had been dealt with and the petition dismissed. THA Motion is support by a very brief affidavit which adds that as at the date of the said dismissal, and in particular, the 15th April 2024, she had filed a Notice of change of advocate as well as a Notice of motion which were yet to be placed on the court file.
2. That application was resisted by the respondents who swore and filed a Replying Affidavit on the 13th January 2025. The gist of the opposition is that on the date set, neither the petitioners nor their counsel attended court and that the matter was thus dismissed when no cause was shown. To the respondent no reason has been advanced to merit reinstatement of the petition just as it is deemed a mischief to try and join the Governor as a 3rd respondent without the leave of the court.
3. In accordance with the court's directions, both sides have filed written submissions. The petitioner's very brief submissions are dated 31st May 2024 while those by the respondents, which the court considers very elaborate, are dated 24th March 2024.



4. The court has had the benefit of reading both and satisfied that the only issue for determination is whether there is demonstrated merit is the prayer to set aside the dismissal order.
5. It is a well settled position of the law that the remedy of setting aside is discretionary and designed to correct mistakes that are explicable for the ends of justice to be achieved. However, it is never purposed to aid and bless a litigant who has by design set out to delay or obstruct the course of justice by dexterity, indolence or inordinate delay. See *Shah vs Mbogo* (1967) EA 166
6. While the applicant has said that the counsel indeed attended court virtually but dropped the call only to come back and find the matter dealt with, there is nothing in response or rebuttal by the respondent. That leaves the assertion by the applicant unchallenged. When so unchallenged, the court is left with the uncontroverted position that counsel attended court but, for reasons beyond her control, her called dropped leading to her absence when the mater was called out. That explanation the court finds plausible and acceptable.
7. When that plausible explanation is viewed in light of the fact that the application was lodged the same day, very expeditiously, that the petition is yet to be heard on the merits and the demand for justice that it be administered substantively, the court finds that the applicant has made out a compelling case for setting aside. The court finds the application merited and allows it as prayed.
8. Having allowed the application, the court notes that the petition has overstayed in court with no clear justification. To court, however, the petitioners having moved the court, they had the duty to aid the court meet its overriding objectives, one of which is to deal with the court cases expeditiously and in a proportionate manner. That the matter has not been prosecuted for a period now in excess of five year is to be abhorred and not given any accolades.
9. Accordingly, the dismissal order is set aside but on terms that the petitioner shall file and serve its submissions to the petition within 14 days from today so that the respondent equally files and serves submission with 14 days after being served by the petitioner.
10. Time is of essence in that if there shall be a default to file the submission by the petitioners by close of business on the 27th October 2025, the petition shall stand dismissed.
11. Because the default leading to the dismissal and triggering the application was that of the petitioners, they cannot be awarded the costs of the application she has orchestrated. The costs of the application shall be to the respondent in all events.
12. This matter is stood over to the 27th November 2025, for highlighting of submission, if there shall have been compliance with the directions given herein.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF OCTOBER, 2025

PATRICK J O OTIENO

JUDGE

