



**Daima Energy Services Limited v County Secretary, County  
Government of Taita Taveta (Miscellaneous Civil Case E023 of 2022)  
[2025] KEHC 16519 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16519 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CIVIL CASE E023 OF 2022  
AN ONGERI, J  
NOVEMBER 14, 2025**

**BETWEEN**

**DAIMA ENERGY SERVICES LIMITED ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF TAITA  
TAVETA ..... RESPONDENT**

**RULING**

1. The application coming for consideration is the one dated 7<sup>th</sup> July 2025 brought under Article 159(2) (d) of *the Constitution*, Order 12 Rule 7, Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act* and all enabling provisions of the law seeking the following orders:-
  - i. That this application be certified as urgent and service thereof be dispensed within the first instance and on priority basis.
  - ii. That this Honourable Court do set aside the order dismissing this suit, entered on 17<sup>th</sup> October 2024 and the suit be reinstated forthwith.
  - iii. That the costs of this application be borne in the cause.
2. The application is based on the following grounds:-
  - i. That on 17<sup>th</sup> October 2024 this matter came up for directions and was dismissed for non-attendance of the Applicant in Court.
  - ii. That the Honourable Court had on 18<sup>th</sup> September 2024 in the absence of the Applicant, issued a mention notice for 17<sup>th</sup> October 2024 to confirm settlement of the matter, but the Applicant was not served with the said date.



- iii. That the Applicant through its former advocates on record had sought through the Judicial Review application for orders of Mandamus to compel the Respondent to satisfy the decretal sum awarded in Voi CMCC No. 3 of 2020 in the sum of Kshs. 10,360,953 together with costs and interest of which sum the Respondent has paid to the Applicant only a sum of Kshs. 5,000,000 leaving the balance unpaid to date of more than Kshs. 5,677,869.25.
  - iv. That the Applicant's Counsel who was on record in the matter withdrew from acting for the Applicant vide a Chamber Summons application dated 18<sup>th</sup> June 2024 was granted leave to cease acting on 1<sup>st</sup> July 2024 and hence the Applicant had not engaged another lawyer to act for it when the suit was purportedly dismissed for want of prosecution on 17<sup>th</sup> October 2024.
  - v. That the reinstatement of this suit shall not in any way prejudice the Respondent but will enable the court to determine the real question or issues raised in the pleadings on merit and enable the Applicant to follow up on the payment of the balance of the decretal sum from the Respondent, which sum is substantial.
  - vi. That it is in the interest of justice that this application be allowed as the Applicant will suffer loss and damage if the orders are not issued as it has not received the balance of the decretal sum, which is in excess of Kshs. 5,677,869.25/=
3. The application is supported by the affidavit sworn on 7<sup>th</sup> May 2025 which reiterates the grounds above.
  4. The Respondent filed Grounds of Opposition (GOO) in response to the application as follows:-
    - i. The application is misconceived, an abuse of the court process and wholly unwarranted and fails to disclose any sufficient reason to warrant the orders sought.
    - ii. The application is not merited and has not met the threshold for grant of the orders sought.
    - iii. There is an ordinate delay from 17<sup>th</sup> October 2024 to 7<sup>th</sup> July 2025 in filing this application for reinstatement which delay has not been adequately explained by the Applicant.
    - iv. The allegations by the Applicant that no prior notice was issued and that the Applicant was not aware that the matter was listed for directions on 17<sup>th</sup> October 2024 are false and aimed at misleading this Honourable Court to obtain favour. The Applicant herein has failed to come to equity with clean hands and is undeserving of the orders sought.
    - v. The Applicant herein was willfully absent in court on 18<sup>th</sup> September 2024 and was subsequently served with the another notice slated for 17<sup>th</sup> October 2024 to which effect there is an affidavit of service on record sworn on 24<sup>th</sup> September 2024. Despite the aforesaid service, the Applicant similarly failed to attend occur ton 17<sup>th</sup> October 2024 leading to the dismissal. No good reasons have been given as to why the Applicant was not present in court when the matter came up.
    - vi. The Applicant intentionally ignored, neglected and or failed to provide the instructions to another advocate to come on record so as to facilitate proper conduct of this matter. It is trite law that equity aids the vigilant and not the indolent.
    - vii. The Applicant has not demonstrated sufficient cause or grounds upon which the Court should grant the orders sought. As such it would be unjust to do so.
    - viii. In the circumstances it is in the interest of justice that the application is dismissed with costs.



5. The parties filed written submissions as follows:- The Applicant, Daima Energy Services Limited, seeks to have the court's dismissal order from 17th October 2024 set aside and its suit reinstated.
6. The dismissal occurred due to the Applicant's non-attendance at a court mention scheduled for that date.
7. The Applicant argues that its absence was neither willful nor deliberate but was a result of not being served with the mention notice.
8. This lack of service was compounded by the fact that the Applicant was unrepresented at the time, as its previous advocates had been granted leave to cease acting on 1st July 2024, and new counsel had not yet been engaged.
9. Consequently, the Applicant was genuinely unaware of the court date.
10. The Applicant further submits that sufficient cause has been demonstrated to warrant the exercise of the court's discretion under Order 12 Rule 7 of the Civil Procedure Rules to set aside the dismissal.
11. The applicant invokes the constitutional right to a fair hearing under Article 50(1) and the court's mandate under Article 159(2)(d) to administer justice without undue regard to procedural technicalities.
12. The Applicant relies on judicial precedents which emphasize that denying a party a hearing should be a last resort and that justice should be done between the parties.
13. Furthermore, the Applicant contends that the application was filed without undue delay, having been promptly initiated upon discovering the dismissal via the e-filing platform.
14. It asserts that it will suffer significant and irreparable prejudice if the suit is not reinstated, as it stands to lose the opportunity to recover a substantial balance of over KShs. 5.6 million from a decretal sum awarded in a related case.
15. The Applicant concludes that the Respondent has not demonstrated any specific prejudice it would suffer if the application is allowed, whereas a failure to reinstate the suit would cause grave injustice to the Applicant by depriving it of the chance to enjoy the fruits of its judgment.
16. The Respondent submitted that the application by Daima Energy Services Limited to reinstate the suit should be dismissed.
17. The Respondent argues that the Applicant has displayed a clear lack of interest in prosecuting its own case, having failed to attend court on two consecutive occasions, which led to the suit's dismissal for want of prosecution on 17th October 2024.
18. Furthermore, the Respondent contends that the Applicant's delay of over eight months, from October 2024 to July 2025, in filing the application for reinstatement is inordinate and has not been sufficiently explained.
19. That allowing the application would reward the Applicant's indolence and prejudice the Respondent, who has diligently adhered to court procedures.
20. The Respondent invokes the constitutional principle that justice shall not be delayed and the overriding objective of the *Civil Procedure Act*, which mandates the expeditious and efficient resolution of disputes.



21. The Respondent concludes that the Applicant must bear the consequences of its own inaction and that reinstating the suit would be an abuse of the court process and an injustice.
22. The issues for determination in the dated 7th July 2025 are as follows;
  - i. Whether the Applicant has demonstrated sufficient cause to warrant the setting aside of the dismissal order issued on 17th October 2024;
  - ii. Whether the application was filed without undue delay.
23. On the first issue, the court's discretion to set aside an order of dismissal is guided by the principles enshrined in Article 159(2)(d) of *the Constitution* and Order 12 Rule 7 of the Civil Procedure Rules.
24. The constitutional imperative is that justice shall be administered without undue regard to procedural technicalities.
25. The Applicant's explanation for its non-attendance on 17th October 2024 is that it was unrepresented, its previous advocates having ceased to act on 1st July 2024, and that it was not served with the mention notice for that date.
26. The Respondent countered this by pointing to an affidavit of service sworn on 24th September 2024, asserting that notice was duly given.
27. However, the critical factor is the Applicant's state of representation. The jurisprudence from the Kenya Law Reports consistently emphasizes that where a party is unrepresented, a more lenient view should be taken.
28. The court's discretion to set aside *ex parte* orders is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error.
29. The Applicant's lack of legal representation at the material time constitutes a plausible explanation for its failure to attend court and to be aware of the court diary.
30. This is not a case of wilful disobedience but rather of a litigant being in a state of transition between legal representatives.
31. The Respondent has not demonstrated any specific prejudice it would suffer that cannot be compensated by an award of costs.
32. The scales of justice, therefore, tilt in favour of reinstating the suit to allow the substantive issues to be determined on their merits.
33. On the second issue regarding the delay in filing the application, the Respondent contends that the period from 17th October 2024 to 7th July 2025 is inordinate and unexplained.
34. The Applicant's explanation is that it discovered the dismissal upon checking the e-filing platform and thereafter acted promptly.
35. While an eight-month delay is not insignificant, the courts have consistently held that delay alone is not an absolute bar to the exercise of discretion in favour of a party, particularly where the explanation, though not perfect, is plausible in the context of a self-represented litigant and where the stakes are high.
36. The overriding objective of the *Civil Procedure Act*, as captured in Sections 1A and 1B, is to facilitate the just, expeditious, proportionate, and affordable resolution of the substantive dispute.



- 37. The need to administer justice on the merits of a case outweighs the procedural default of delay. The substantial amount of money involved and the Applicant’s constitutional right to be heard are weighty considerations that render it in the interest of justice to excuse the delay in this instance.
- 38. Consequently, having evaluated the circumstances of this case holistically, the court finds that the Applicant has offered a reasonable explanation for its default and the subsequent delay.
- 39. The application dated 7<sup>th</sup> July 2025 is merited and is hereby allowed. The order of this court is as follows:
  - i. That the order made on 17<sup>th</sup> October 2024 dismissing this suit is hereby set aside.
  - ii. That Misc. Civil Case No. E023 of 2022 is hereby reinstated.
  - iii. That the Applicant shall pay the Respondent thrown away costs of Kshs. 20,000 before the case is heard.
  - iv. That the costs of the application to abide the cause.

**DATED, SIGNED AND DELIVERED THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**  
**JUDGE**

In the presence of:-

Court Assistant: Mabishi/Millicent

.....for Applicant

.....for Respondent

