



**Mohan Galot Industries Limited v Mavoko Sub County & another (Environment and Land Petition 20 of 2018) [2025] KEELC 7507 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7507 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND PETITION 20 OF 2018  
AY KOROSS, J  
NOVEMBER 4, 2025**

**BETWEEN**

**MOHAN GALOT INDUSTRIES LIMITED ..... PETITIONER**

**AND**

**MAVOKO SUB COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a notice of motion filed by the petitioner dated 14/05/2023, expressed to have been moved within Sections 1, 1B, 3A and 63 (c) and (e) of the Civil Procedure Act and Orders 12 Rule 1 and 51 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law. It seeks the following reliefs from this court: -
  - a. Spent.
  - b. The ex parte order of this court made on 25/04/2023, dismissing the petition for want of prosecution, be set aside.
  - c. The court be pleased to allocate a fresh date for the purposes of highlighting submissions.
  - d. The submissions by the petitioner annexed hereto be deemed as duly filed and served.
  - e. Costs of the motion be in the cause.
2. The motion is based on the grounds stated on its face and the supporting affidavit sworn by advocate Wanjira Maina on 12/05/2023. A summary of the grounds in support of the motion is as follows: (a) counsel mistakenly misdated the hearing date as 25/04/2025 instead of 25/05/2025; (b) by coincidence, the petitioner's legal firm became aware of this error, and Mr. Tiego, a counsel from the firm, attempted to access the online court hearing platform but was unsuccessful due to a power outage



and intermittent internet connectivity; (c) there was no delay in the filing of the instant motion, and the petitioner's submissions have been duly filed.

3. The motion is unopposed and, as directed by the court, the law firm of Ms Tiego & Company Advocates filed written submissions on 21/05/2025. Accordingly, the court has thoroughly examined the motion, its grounds, affidavit, and the petitioner's arguments, which are supported by relevant laws and case precedents. The single issue for determination, which aligns with the issues as framed by the petitioner, is whether the petitioner has met the legal threshold to warrant the grant of the sought orders.
4. Regarding the relevant law, as outlined in the motion and affirmed in the petitioner's submissions, it is found in Order 12 Rule 7 of the Civil Procedure Rules. This law permits a party to approach the court with an application requesting it to exercise its discretionary power and set aside or vary the judgment or order on such terms as may be just. A review of the court records shows that the petition was dismissed for want of prosecution.
5. The petitioner submits that it reaffirms this court's discretionary power to set aside ex parte judgments or orders. To it, this discretion should be exercised to prevent injustice or hardship caused by accidents, inadvertence, or excusable mistakes, rather than to assist parties who intentionally hinder or delay justice. These court associates itself with these principles as affirmed in the case of Richard Ncharpi Leiyagu v Independent Electoral Boundaries Commission & 2 others [2013] KECA 282 (KLR). To support these principles, the petitioner refers to the decision of Thomas -vs- Aiyabei & another (Environment & Land Case E020 of 2022) [2025] KEELC 2906 (KLR), where the court acknowledged that counsel's failure to attend due to a misdiarised date and internet issues was an excusable mistake and should not be penalised by dismissing the litigant's case.
6. When considering these principles, it must be remembered that the burden of proof rests on the party seeking the court's discretion to reinstate a suit and to provide sufficient and plausible reasons in support of the application. This court has examined the reasons presented by the petitioner regarding their failure to attend court on 25/04/2023, and it is deemed that the explanation that counsel misheard the court when issuing the hearing date is not tenable, given the existence of the e-filing system. Aside from orally issuing dates in court, the court's electronic system has implemented additional automated mechanisms to inform parties of hearing/mention dates. This position was well elaborated in the decision of Maina v J.K. Horeria t/a Horeria & Company & another [2023] KEELC 16919 (KLR) as follows:-

“It is worth noting that in this era of e-filing that was officially launched by the Judiciary on July 1, 2020 the e-filing court systems usually sends parties automated notifications either emails or Short Message Services (SMS) notifying parties of upcoming court dates and any charges (sic) in the schedule. Parties have always been urged time without number to embrace the said technology. The proceedings that Counsel for the Defendant seeks to set aside were definitely post the launch/commencement of court's e-filing system.”

7. This automated message may clarify why Mr. Tiego attended the court on the pertinent hearing date, despite encountering technological difficulties. Therefore, this court concludes that the claim of misdiarization is not credible. However, the petitioner's counsel has elucidated the circumstances that transpired on the day of the hearing, and this court is inclined to exercise leniency by giving the benefit of the doubt to the counsel and reinstating the petition. The petitioner mitigated the nonattendance by promptly submitting the current motion.



8. For the foregoing reasons, the notice of motion dated 14/05/2023 is allowed by issuing the following orders:-
- a. That the order of this court made on the 25/04/2023 dismissing the petition together with all other consequential orders be and are hereby set aside.
  - b. The petition is hereby reinstated for hearing and determination on its merits.
  - c. A mention date shall be given for directions on the hearing of the petition.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 4TH DAY OF NOVEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

11.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Miss Onyango holding brief for Mr. Tiego for petitioner/applicant.

M/s Ndunda for 1<sup>st</sup> respondent.

N/A for 2<sup>nd</sup> respondent.

