Mahadi Investments Ltd v Kenya Railways Corporation & another (Civil Application E217 of 2025) [2025] KECA 2024 (KLR) (28 November 2025) (Ruling)

Neutral citation: [2025] KECA 2024 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION E217 OF 2025

K M'INOTI, JM NGUGI & GV ODUNGA, JJA

NOVEMBER 28, 2025

BETWEEN

MAHADI INVESTMENTS LTD ..... APPLICANT

AND

KENYA RAILWAYS CORPORATION ..... 1ST RESPONDENT

THE TRUSTEES, KENYA RAILWAYS CORPORATION STAFF RETIREMENT BENEFITS SCHEME ..... 2ND RESPONDENT

(Application for reinstatement of the Applicant's Notice of Motion dated 28th March 2025, dismissed on 19th May 2025)

RULING

1. On 19th May 2025, this Court (Tuiyott, Nyamweya & Korir, JJA.) dismissed the applicant's application dated 28th March 2025 under rule 58(1) of the Court of Appeal Rules for non-appearance. By that application the applicant was seeking an order of injunction to restrain the respondents from interfering with the property known as L.R. No. 209 1064 1, 2 & 3 situate along Valley Road within Nairobi County (the suit property) pending the hearing and determination of an appeal from the ruling of the Environment & Land Court at Nairobi (Mboya, J.) dated 20th December 2024. On the day in question, when the application was called out for hearing, only counsel for the respondents were present in Court. Neither the applicant nor its counsel attended Court and, on application by counsel for the respondents, the Court dismissed the application as aforesaid.

2. On 16th June 2025, the applicant applied for reinstatement of the dismissed application. It is apt to point out that the application for reinstatement was made within the period of 30 days prescribed by rule 58(4) of the Court of Appeal Rules.

3. By dint of rule 58 (3), an applicant seeking reinstatement of an application that has been dismissed for want of appearance is obliged to show the Court that he or she was prevented by a sufficient cause from appearing when the application was called out for hearing.

4. The reason proffered by the applicant to explain failure to appear at the scheduled hearing of the application is set out in the affidavit of Paul W. Wafula, learned counsel for the applicant, sworn on 16th June 2025 where he deposes as follows in the relevant paragraphs:

> "7. I wish to state that we had not been served with any hearing notice fixing Civil Appeal (Application) E217 of 2025 for hearing on 19th May 2025...
>
> 9. In particular the hearing notice was sent to email info@ amgjillo.com while our official email is info@treowe.law..."

5. Mr. Wafula further explained that in early May, their law firm had embarked on rebranding to align with their global partners and in the process discarded their old email address and acquired a new one.

6. In short, the sufficient cause was that the Court Registry was to blame for failure to notify the applicant's advocates of the date of the hearing of the application. This was the case mounted by the applicant in its written submissions dated 3rd July 2025, which were highlighted by Mr. Wafula. Counsel relied on the ruling of this Court in Director General, National Employment Authority v. Al Hujra Agencies Ltd [2022] KECA 379 (KLR), where the Court reinstated a dismissed application because the hearing notice was sent to the wrong email address.

7. The 1st respondent opposed the application vide a replying affidavit sworn on 20th June 2025 by Stanley Gitari, its General Manager, Legal Services and Corporation Secretary and written submissions dated 9th July 2025, which were highlighted orally by its counsel, Mr. Mwangi.

8. The substance of the response is that the applicant had failed to show sufficient cause why neither it nor its counsel appeared for the scheduled hearing of the dismissed application. Counsel submitted that there was no contest that the hearing notice was sent to the email address info@ amgjillo.com, which was the email address that the applicant had provided to the Court. It was further contended that if the applicant had decided to change its email address to info@treowe.law, it was obliged by rule 18 of the Court of Appeal Rules to notify the Court and the other parties, which it did not do.

9. The 1st respondent argued that it was disingenuous for the applicant to blame the Court rather than candidly take responsibility for its own omission. We were urged to find that in the circumstances the applicant had not present sufficient cause to warrant the setting aside of the order for dismissal. It was also contended that it was the 1st respondent which stood to suffer more prejudice as the suit property had already been substantially re-developed and handed over to a third party.

10. The 2nd respondent did not respond to the application and when offered the opportunity to address the Court, its learned counsel Mr. Mugo, merely left the matter to the Court.

11. We have carefully considered this application. To set aside an order for dismissal, the applicant must jump two hurdles. The first is to make the application within 30 days from the date of the order of dismissal. The applicant has successfully jumped that hurdle. The second is that the applicant must present sufficient cause for the failure to attend Court on the appointed date. What will constitute sufficient cause depends on the circumstances of each case. But in our perception, sufficient cause connotes an explanation of such quality or value as would justify setting aside the order of dismissal; a reason that is adequate in law, showing why the applicant's request to set aside the order of dismissal should be granted.

12. The applicant's contention that the Court did not serve on its advocates a hearing notice is not true. The record shows that the applicant's advocates were served with a hearing notice on Monday 12th May 2025 at 1:12 pm through the email address Mahmoud Gitau Jillo LLP>info@ amgjillo.com which is the email address they had provided to the Court. It is, therefore, misleading to allege that the Court did not dispatch the hearing notice, or that it sent it to the wrong email address. As a matter of fact, the applicant does not deny that the said email address was its advocates' email address. Further, we note that the hearing notice does not contain the usual alert that the mail had not been delivered or that the email address was non- existent.

13. We would possibly have taken a different view of the matter were the applicant candid enough to admit to its own fault in failing to comply with rule 18 of the Court of Appeal Rules. The Court is always sympathetic to a party who shows candour. Instead, what we have before us is a deliberate and belated attempt by an unrepentant applicant to shift the blame to the Court's registry, which we find to have been totally blameless.

14. The upshot is that the applicant has not presented sufficient cause why the Court should set aside the order of dismissal dated 19th May 2025. The notice of motion dated 16th June 2025 is hereby dismissed with costs to the 1st respondent.

DATED AND DELIVERED AT NAIROBI THIS 28 TH DAY OF NOVEMBER 2025.

K. M'INOTI

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JUDGE OF APPEAL

JOEL NGUGI

..... .

JUDGE OF APPEAL

G. V. ODUNGA

..... .

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

Deputy Registrar