

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. E014 OF 2023

RICHARD **KANINAH**
OGUKU-----PLAINTIFF/RESPONDENT
VERSUS
PAUL **GUMO-----**
DEFENDANT/APPLICANT

RULING

- 1.** The court, by an application dated **2/10/2025**, is asked to deem the application dated **2/10/2025** as properly filed. The motion is supported by an affidavit sworn on **12/10/2025** by Dennis Kisaka. It is deposed that there was an inadvertent mistake in seeking leave to come on record; that the applicant had obtained a consent dated **8/8/2025** from the former advocates on record, attached as **DK-(2)**, which were unfortunately not attached to the application previously filed.
- 2.** The applicant deposes that the application is made in good faith, the error is curable, there will be no prejudice occasioned to the respondents and that under **Order 9 Rule 9** of the Civil Procedure Rules as read together with **Section 3A** of the Civil Procedure

Act and **Article 159 (2)(d)** of the Constitution, the court has powers to grant the orders sought in the interest of justice.

3. The applicant relies on written submissions dated **9/10/2025**. It is argued that the reinstatement of an application is a discretionary power to be exercised by the court, as held in **Shah -vs- Mbogo & Another [1967] EA 116** and **Richard Nchapi Leiyagu -vs- Independent Electoral And Boundaries Commission & 2 others [2013] eKLR.**
4. The applicant submits that the application was filed within a week and hence there was no inordinate delay. Reliance is placed on **Sagoo & Another -vs- Mesa Civil Case No. 71 of 2015 [2013] KEELC 21475 [KLR] (9th November 2023) (Ruling).**
5. On **23/9/2025**, this court dismissed an application dated **11/8/2025** for non-service and non-attendance. Come **3/10/2025**, the application dated **2/10/2025** was certified urgent and directed to be served for an interpartes hearing on **14/10/2025**.
6. The matter came for an interpartes hearing on **14/10/2025**, whereof it was opposed through a replying affidavit sworn by Richard Oguku on **9/10/2025**. The court gave a ruling date. The applicant seeks to have the notice of motion, which

was dismissed on **23/9/2025**, reinstated. The application was dismissed for non-service and non-attendance.

7. To set aside a dismissal order is a discretionary power of the court, as held in **Shah -vs- Mbogo** (*supra*) and in **Richard Ncharpi Leiyagu -vs- Independent Electoral and Boundaries Commission** (*supra*), to avoid an injustice or hardship arising out of inadvertence, mistake, or excusable mistake or error. It is not excusable where the applicant acted deliberately, whether by evasion or otherwise, to obstruct or delay the cause of justice.
8. The court record is clear on the reasons for the dismissal of the earlier application on **23/9/2025**. All that the applicant should state is why he did not serve the application on time or at all, and the reason for not being in court on **23/9/2025**.
9. The applicant has not attempted to address that issue. It turns out that the application had also been filed by a law firm without *locus standi* to lodge it. Evidence that the consent and the notice of change of advocates were filed and paid for is not disclosed. Ignorance of the law is no defence.
10. A lawyer who files an application post-judgment is supposed to follow the law. He cannot invoke the

oxygen principle anytime there is non-compliance with the law. I agree with the respondents that the court should not reinstate the application; otherwise, granting leave, which is hereby allowed, cannot apply retrospectively to cure the non-compliance with the law.

11. The application dated **2/10/2025** lacks merit save for the prayer of leave. It is disallowed.

12. Orders accordingly.

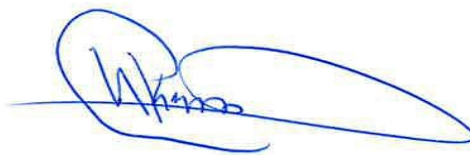
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 26th day of November 2025.

In the presence of:

Court Assistant - Dennis

Marita for the Plaintiff/Respondent present

Kisaka for the Defendant/Applicant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**