



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**ENVIRONMENT AND LAND CASE NO. 61 OF 2020**

**HUMPREY            KITHI            KOMBE.....**

**PLAINTIFF**

**VERSUS**

**LAND REGISTRAR KILIFI.....1<sup>ST</sup>**

**DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup>**

**DEFENDANT**

**ASHOK DOSHI..... 3<sup>RD</sup>**

**DEFENDANT**

**ALI TAIB Alias MOHAMMED ALI.....4<sup>TH</sup>**

**DEFENDANT**

**RULING**

1. The application dated May 20, 2025, significantly seeks the reinstatement of this suit, costs, and any other further orders the court may deem fit to grant.

- 2.** The annexed affidavit of the advocate for the applicant, C.K. Katsoleh, supports the application.
- 3.** The defendants have opposed the application with affidavits from counsel for the 3rd defendant, Mr. Oluga, and the 4th defendant himself.
- 4.** The application was canvassed through written submissions. I acknowledge receipt of submissions from Mr. Katsoleh, learned counsel for the plaintiff/applicant; Mr. Oluga, learned counsel for the 3rd defendant/respondent; and Mr. Mukiri, learned counsel for the 4th defendants/respondents, with much appreciation. The submissions provided the court with valuable assistance in determining the issues raised in the application.
- 5.** Based on the materials and submissions presented before me, the issues for the court to determine, which I frame, are whether to reinstate the plaintiff/applicant's suit and who should bear the costs of the application.
- 6.** This matter was scheduled for a hearing on May 20, 2025; however, neither the plaintiff nor his counsel appeared before the court. The court consequently ordered the

dismissal of the case due to nonattendance and/or lack of prosecution.

**7.** Mr. Katsoleh claims he could not attend court that day because he was attending the funeral of a close Muslim relative in Mombasa. When the case was called for hearing, he had asked a lawyer colleague to hold his brief, but then the matter had already been called and dismissed. He maintains that he had valid reasons for missing court that day and considers the case's dismissal unfortunate, urging for its reinstatement.

**8.** Counsel asserts that Order 12 Rule 7 of the Civil Procedure Rules stipulates that, in instances where an order has been issued and a suit dismissed, the court may, upon application, set aside or modify the orders or judgment under equitable conditions. Additionally, he argues that the discretion to reinstate suit or annul a judgment should be exercised impartially.

**9.** Mr. Oluga contends that the plaintiff ought to have explicitly requested the annulment of the order issued on 20 May 2025, which dismissed the suit, before seeking its reinstatement. The plaintiff erred by requesting

reinstatement without first addressing the dismissal order. Therefore, the application is flawed and cannot be permitted. On that basis alone, the application must be denied.

**10.** The counsel proceeds to state that the second reason why the application cannot be granted is that the plaintiff did not swear an affidavit to support the application and to demonstrate that he is still interested in pursuing the suit. As it is, the court was not informed that the plaintiff is interested in the case. It is only the plaintiff's counsel, Mr. Geoffery Katsoleh, who swore the supporting affidavit to explain why he did not attend court, not the plaintiff. The plaintiff should have sworn an affidavit attesting to his continued interest in the case.

**11.** Counsel argues that this suit was filed in 2020, making it five (5) years old. However, the plaintiff has not shown any interest in advancing the case. Refer to Section 1A (1) and (3) of the Civil Procedure Act, Cap 21 of the Laws of Kenya, on the overriding objectives of the Civil Procedure Act and Rules to facilitate a just, expeditious, proportionate, and affordable resolution of civil disputes governed by the Act.

- 12.** Counsel argues that the reasons provided by Mr. Katsoleh are insufficient to justify granting the applicant's request for reinstatement of the suit. He points out several instances when the applicant's counsel failed to appear in court.
- 13.** Counsel cited the decision in **Thomas Omondi Otieno v Wells Fargo [2019] eKLR**. In that case, Rika J. dismissed an application for reinstatement of a suit, stating that the clerk responsible for conveying the message that counsel for the case could be absent that day did not swear an affidavit.
- 14.** Counsel also cites a more binding case, **Jimcab Services Limited v Bartholomew Bernard Osodo & another [2018] eKLR**, where the Court of Appeal held that it was important to disclose the name of the person whose inadvertence is being used as an excuse to seek redress and to have an affidavit from that person.
- 15.** Counsel further stated that, therefore, it was important that the name of the advocate whom Mr. Katsoleh had sent to hold his brief and who found that the matter had been called be disclosed, and an affidavit from them be filed. In the absence of disclosure of the name and an affidavit from them, the conduct of the applicant falls short of the threshold

set for conduct that is excusable and that justifies the court's intervention on behalf of a deserving litigant.

**16.** Mr. Mukiri, representing the 4th defendant, echoed similar sentiments to Mr. Oluga's statement, noting that the plaintiff has never appeared in court before. The ongoing litigation has significantly impacted the parties involved, including his client, who has faced financial hardship and health issues related to attending this matter. Counsel cites a series of judicial precedents indicating an unavoidable conclusion that this suit should not be reinstated – see **Rajesh Rugani v Fifty Investments Limited & anor [2005] eKLR, Mwangangi v Mugi (Civil Appeal 1 of 2023) [2024] KEHC 6321 (KLR) (30 May 2024) (Ruling), Bi-Mach. Engineers Ltd v James Kahoro Mwangi (2011) eKLR, Karani v Judicial Service Commission (Cause E191 of 2022) [2023] KEELRC 2880 (KLR) (10 November 2023) (Ruling), and Kang'ethe v Nkirote [2024] KEELC 7383 (KLR).**

**17.** I have conducted a review of the submissions made by the warring parties in this matter. I hereby concur with the arguments presented by the counsels representing the

respondents regarding the necessity for the swift resolution of cases and the efficient management of court proceedings, in accordance with **Article 159** of the **Constitution** and **Sections 1A, 1B, and 3** of the **Civil Procedure Act**. It is incumbent upon the court, litigants, and advocates to ensure that cases are concluded expeditiously, without undue delay.

**18.** I agree with the sentiments expressed by Yano J. in **Kang’ethe v Nkirote [2024] KEELC 7383 (KLR)**:

*“Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised in a just manner, as was held in Bilha Ngonyo Isaac Vs Kembu Farm Ltd & another [2018] eKLR (J N. Mulwa J), which echoed the decision of the court in Shah v Mbogo & another (1967) EA 116 (Harris J), where the court stated on the matter of discretion;*

*“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”*

**28. One of the issues that usually confront the courts with respect to dismissal of suits for delays and the subsequent applications for reinstatement, is the need for expeditious conclusion of suits. In *Mobile Kitale Service Station Vs Mobil Oil Kenya Limited & another* [2024 (Warsame J) where it was held:**

***“I must say that the courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference, and/or negligence of the plaintiff. That negligence, indifference, and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”***

**19.** Considering the history of the case, the plaintiff and his counsel have contributed significantly to delays, as outlined by Mr. Oluga and Mr. Mukiri on behalf of the respondents. The explanation provided by Mr. Katsoleh regarding his absence from court that day is unpersuasive, especially in

the absence of an affidavit from the counsel he designated to hold his brief and an explanation for why his client did not submit an affidavit disclosing his ongoing interest in the matter.

**20.** Nevertheless, following the dismissal of the plaintiffs' suit on the designated date, I acknowledge the existence of a counter-claim on record that has not been prosecuted. As a counter-claim constitutes a separate proceeding from the main suit, the plaintiff is obliged to participate. In my assessment, given that no party has presented evidence, I am inclined to reinstate the suit for concurrent hearing with the counterclaim, enabling the court to render a comprehensive decision after evaluating evidence from both parties.

**21.** Had the counterclaim been heard, I would not have been persuaded to reinstate the suit. Therefore, I am inclined to reinstate the suit to be heard alongside the counterclaim, as a benefit of the doubt is extended to the plaintiff in this regard.

**22.** Consequently, the application dated May 20, 2025, is hereby allowed, but the applicant shall bear the costs of the application.

**Dated, signed, and delivered electronically in Malindi on November 19, 2025.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Mr. Makadina for the 3<sup>rd</sup> Defendant/Respondent**

**Ms. Kwoba for the 4<sup>th</sup> Defendant/Respondent**

**Happy: Court Assistant**

**In the absence of:**

**Mr. Katsoleh for the Plaintiff/Applicant**

**Mr. Munga for the 2<sup>nd</sup> Defendant/Respondent**