



**Gachui & 5 others v Frank Logistics Limited & 3 others (Environment and Land Case 282 of 2017) [2025] KEELC 8425 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8425 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 282 OF 2017**

**JM ONYANGO, J  
DECEMBER 2, 2025**

**BETWEEN**

**WANJIKU NJUGUNA GACHUI ..... 1<sup>ST</sup> APPLICANT  
WANGUI NJUGUNA GACHUI (SUING AS THE ADMINISTRATORS OF THE  
ESTATE OF THE LATE JOSEPH NJUGUNA GACHUI) ..... 2<sup>ND</sup> APPLICANT  
MULATA MUTHONI MWANGI ..... 3<sup>RD</sup> APPLICANT  
JOSEPH NDAIGA MUHUNDI ..... 4<sup>TH</sup> APPLICANT  
MARY WANGUI WAGANJO ..... 5<sup>TH</sup> APPLICANT  
JOYCE GATHONI MUKUNDI (SUING AS THE ADMINISTRATORS OF THE  
ESTATE OF THE LATE MUKUNDI NDAIGA) ..... 6<sup>TH</sup> APPLICANT**

**AND**

**FRANK LOGISTICS LIMITED ..... 1<sup>ST</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT  
THE REGISTRAR OF LANDS, THIKA ..... 3<sup>RD</sup> DEFENDANT  
JAMES NYIRA KARANJA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this Court is a Notice of Motion application dated 5<sup>th</sup> May 2025 seeking the following Orders:
  1. Spent...
  2. That this Honourable court be pleased to reinstate the Plaintiff's suit for the same to be heard and determined on merit



3. That the Plaintiffs be granted leave to file the Reply to Defence and Defence to Counterclaim of the 1<sup>st</sup> and 4<sup>th</sup> Defendants, further statements and documents and a pretrial bundle.
  4. That the cost of this application be provided for.
2. The application is premised on the grounds on the face of it and the affidavits of P. Kagiri Njuguna, Joseph Ndaiga Mukundi and Mary Wangui Waiganjo sworn on even date.
  3. Essentially, the applicants contend that a succession of grave personal misfortunes, marked by illness and bereavement within their families, disrupted their capacity to attend to the suit with the diligence required.
  4. The applicants assert that these circumstances that befell their family culminated in the dismissal of their case which they now seek leave to revive.
  5. The 1<sup>st</sup> Respondent lodged the replying affidavit of Francis Nyaga Njeru sworn on 25<sup>th</sup> September 2025 that mounts a vigorous challenge to the application, disputing both its factual foundation and its legal propriety, and urging the Court to regard the motion as an unmerited bid to resurrect a matter long left to repose.

### **Issues for Determination**

6. Having examined the application together with the annexures, the replying affidavit in opposition and the relevant authorities, the sole issue for determination is whether the applicants have established sufficient cause to merit the reinstatement of their suit.

### **Analysis and determination**

7. The Court approaches the plea for reinstatement with the understanding that it invokes both statutory command and judicial discretion.
8. Sections 1A and 1B of the *Civil Procedure Act* impose upon all litigants and the Court a duty to advance the overriding objective: the just, expeditious, proportionate, and affordable resolution of disputes.
9. Order 12 rule 7 of the Civil Procedure Rules then vests the Court with the power to set aside a dismissal where sufficient cause is demonstrated, while section 3A safeguards the Court's inherent authority to prevent injustice.
10. The jurisprudence is settled that this discretion is neither automatic nor indulgent.
11. In *Utalii Transport Company Limited & 3 others v Nic Bank Limited & another* [2014] eKLR the court addressed reinstatement of a suit in the following terms:

“...dismissal of a suit without hearing the merits is draconian act which drives the plaintiff from the judgment-seat. It is, therefore, a matter of discretion by the court. See the opinions of Danckwerts, LJ in *NAGLE v FIELDEN* [1966] 2 QBD 633 at p 648, and Lord Diplock in *BIRKET v JAMES* [1978] A.C. 297. A great number of cases in the Court of Appeal have adopted that approach but I do not wish to multiply them. Accordingly, I will discern the principles which the law has developed to guide the exercise of discretion by court in an application for dismissal of suit for want of prosecution. These principles are:

1. Whether there has been inordinate delay on the part of the Plaintiffs in prosecuting the case;



2. Whether the delay is intentional, contumelious and, therefore, inexcusable;
  3. Whether the delay is an abuse of the court process;
  4. Whether the delay gives rise to substantial risk to fair trial or causes serious prejudice to the Defendant;
  5. What prejudice will the dismissal occasion to the plaintiff?
  6. Whether the plaintiff has offered a reasonable explanation for the delay;
  7. Even if there has been delay, what does the interest of justice dictate: lenient exercise of discretion by the court?"
12. In the present application, these guiding principles must be carefully applied to the applicants' explanation that their delay arose from multiple serious illnesses and successive bereavements within their families, circumstances which they contend materially impeded their capacity to diligently prosecute the suit.
  13. The Applicants aver that a series of grave personal misfortunes, multiple serious ailments and successive bereavements in the family, incapacitated them from diligently following up on the suit.
  14. To substantiate their claim, the applicants have annexed various documents to their supporting affidavit marked as "M2025 1- 10" including: death certificates, burial permits, and grants they applied for after the death of various administrators, together with a bundle of documents demonstrating their readiness and intention to prosecute the suit once circumstances permitted.
  15. The Court has meticulously examined the documents adduced by the applicants to buttress their case. The court has equally perused the replying affidavit and taken note of the chronology of events from the 1<sup>st</sup> Respondent's perspective.
  16. The common thread that emerges from both the Applicants and the 1<sup>st</sup> Respondents averments is that the suit was adjourned severally by the Applicants. The 1<sup>st</sup> Respondent contends that the delay in prosecuting the suit stems solely from the Applicants' indolence and beseeches this court to dismiss the instant application with costs.
  17. In contrast, the Applicants contend that the delay was inadvertent, borne of circumstances beyond their control and maintain that they are ready to prosecute the suit. It is the Applicants' prayer that the court exercise its discretion to grant them leave to reinstate the suit to ensure the ends of justice are met.
  18. In my view, this is not a case of indifference or neglect but of misfortune beyond the control of the applicants. The circumstances, grievous illness, bereavement, loss of administrators, go to the root of human frailty. They constitute more than a mere lapse; they amount to a disruption of capacity, which under the discretion reserved for the Court, merit compassionate consideration.
  19. Indeed, the Court in *Utalii Transport* (supra) emphasised that the responsibility to advance a suit lies with the plaintiff; but it did not immunise the Court from exercising discretion when justice demands.
  20. Moreover, to deny reinstatement where a litigant demonstrates readiness, genuine hardship, and a credible cause risks sacrificing substantive justice at the altar of procedural finality. Such rigidity would run contrary to the spirit of sections 1A and 1B of the *Civil Procedure Act* and to the broader constitutional mandate of the courts to administer justice fairly and without undue delay.



21. The Court must, however, balance the equities. The discretion to reinstate is not automatic. The remedy is intended to relieve litigants of hardship or inadvertent error, not to reward inaction or tactical delay.
22. This position was well elucidated in *Kurji & 4 others v Kurji & 3 others* [2024] KECA 882 (KLR) where the court expressed itself as follows:

“The above provisions confer wide discretion to a trial Court set aside an order dismissing a suit for want of prosecution. However, the discretion must be exercised judicially and justly. The rationale for this wide discretion was underscored by the East African Court of Appeal in *Shah vs. Mbogo and Another* [1967] E.A 116 as follows:

“The discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.”
23. Accordingly, the Applicants must demonstrate that their explanation is not only plausible but timely, that they did not unduly tarry once the impediments were removed, and that the interests of justice, including fairness to the Respondents, would not be prejudiced by reinstatement.
24. Applying those yardsticks, the applicants’ case stands on firm footing. They acted not out of lethargy but from necessity. The documentation annexed, death certificates, burial permits, grants pursued after administrators died, offers a verifiable trail of events that confronted them with personal calamity.
25. The Applicants’ subsequent readiness and proposal to proceed with the suit, demonstrated through a full bundle of documents, shows that they have not abandoned their cause.
26. In the absence of evidence showing that the Respondents would suffer actual prejudice, the Applicants’ request for reinstatement merits careful consideration.
27. In the premises, the Court’s discretion must be exercised in favour of the applicants. To do otherwise would penalize them twice: first through misfortune, and second by denying them their day in court.
28. In deference to the constitutional mandate to uphold substantive justice, and in light of the overriding objective of the *Civil Procedure Act*, the imperatives of justice embedded in section 3A, and the unfortunate circumstances disclosed in this application, I am persuaded that the facts of this case call for a measured exercise of discretion, favouring the reinstatement of the suit rather than its dismissal.
29. Accordingly, the application dated 5<sup>th</sup> May 2025 is allowed conditionally as follows:
  - i. I direct parties to ensure that they comply with Order 11 within 30 days from today.
  - ii. The Applicants are directed to diligently observe all subsequent procedural timelines, failing which the Respondents shall be entitled to apply for appropriate relief, including dismissal of the suit.
  - iii. The costs of this application shall be in the cause.

**DATED, SIGNED AND DELIVERED, AT THIKA THIS 2<sup>ND</sup> DAY OF DECEMBER, 2025**

.....  
**J. M. ONYANGO**  
**JUDGE**



In the presence of:

Ms Sheunda for Mr. Osundwa for the 1<sup>st</sup> Defendant

Mr. Muriuki for the 4<sup>th</sup> Defendant

Court Assistant: Hinga

