

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 106 OF 2018

STEPHEN **KAMAU**
THINDIU-----**PLAINTIFF**

VERSUS

MINISTRY OF LABOUR & SOCIAL PROTECTION---**1ST**
DEFENDANT
HON. ATTORNEY GENERAL-----**2ND**
DEFENDANT

RULING

- 1.** This matter was slated for hearing on **27/7/2025**. However, it could not be heard since the plaintiff was unable to attend either virtually or otherwise due to his age, mobility, and communication challenges. The court directed that the matter be heard virtually on **3/11/2025**.
- 2.** Come **3/11/2025**, the matter could not be heard due to an application dated **10/8/2025**, said to have profound effects on the matter, and which should be heard and disposed of first. The court is asked to set aside its orders of **26/6/2025** dismissing the application dated **18/2/2025** and to reinstate it for hearing on merits. The reasons are contained on the

face of the application and in a supporting affidavit of Wanjiku Mwangi, sworn on **10/8/2025**.

- 3.** It is said that the application was initially scheduled for hearing on **31/3/2025**, which was declared a public holiday, then it was rescheduled for hearing on **26/6/2025**. The applicant deposes that the cause list for the day indicated that the matter would come at **9:00 a.m.**, but the court commenced hearing at **8:30 a.m.**, hence by **9:00 a.m.**, when counsel for the applicant logged in, the matter had already been dismissed for non-attendance.
- 4.** The applicant deposes that he explained the discrepancy in the cause list to the court, but was firm that the application had not been served upon the defendants. The applicant attached the cause list and an affidavit of service as annexures marked **WM-(1)** and **(2)**.
- 5.** The applicant deposes that the non-attendance was not willful but due to circumstances beyond his control, and the plaintiff should not be punished. The applicant deposes that while the intended 3rd defendant in the application dated **18/2/2025** had not yet been traced, once the application is allowed,

leave would be sought to serve through substituted service.

6. The applicant deposes that the application is brought on sound facts, there will be no prejudice to the respondents, and the court should strive for substantive justice as per **Article 159** of the Constitution.
7. The plaintiff relies on written submissions dated **24/10/2025**. Reliance is placed on **Wachira Karani -vs- Bildad Wachira [2016] eKLR, Patel -vs- EA Cargo Handling Services Ltd [1974] E.A. 75, Philip Chemwolo & Another -vs- Augustine Kubende [1986] [KLR], Giro Commercial Bank Ltd -vs- Jasvinder Singh Dhadialla [2005] eKLR,** and **James Njuguna vs Medicino Giovanni, Nairobi C.A. No. 216 of 1997.**
8. The discretion of the court deciding whether or not to set aside an ex parte order is meant to ensure that a litigant does not suffer injustice or hardship as a result of any other thing on an excusable mistake or error. In **CMC Holdings Ltd -vs- James Mumo Nzioki [2004] eKLR,** the court said that it would not be a proper use of such discretion if the court turns its back on a litigant who clearly demonstrates

such an excusable mistake, inadvertence, accident, or error.

9. **Section 3A** of the Civil Procedure Act grants the court inherent power to make such orders as may be necessary for the ends of justice or to prevent the abuse of the court process. Courts are there to do justice to the parties by allowing them to present their cases for hearing on the merits.
10. In **Richard Nchapi Leiyagu -vs- Independent Electoral and Boundaries Commission & 2 others [2013] KECA 282 [KLR]**, it was observed that a court has a general power to control its own procedure, to prevent it from being used to achieve injustice and to maintain its character as a court of justice. The court held that the right to a fair hearing is the cornerstone of the rule of law. The right also includes the inherent jurisdiction to dismiss suits in circumstances that protect the integrity of the court process from abuse that would amount to injustice, and at the end of the day, there should be proportionality.
11. The court said that dismissing the petition did not advance the overriding objectives in the administration of justice, nor did it save the court's time.

12. In **Belinda Murai & Others -vs- Amos Wainaina [1978] LLR 2782**, the court held that the doors of justice should not be closed out of mistakes by counsel; otherwise, courts also make mistakes.
13. In this suit, the plaintiff blames the court for starting the time earlier than what was in the cause list.
14. In **Abdirahman Abdi -vs- Safi Petroleum Products Ltd & 6 others [2011] eKLR**, the court, while discussing **Article 159** of the Constitution, said that courts have to do justice to the parties before weighing the prejudice that is likely to be suffered by the innocent party against the prejudice to be suffered by the offending defendant, or the court strikes out its document.
15. Evidence to show when the plaintiff's counsel logged in has not been provided. That notwithstanding, sufficient cause for not attending court is blamed on the discrepancy in the timings on the cause list of the day. In **Wachira Karani (supra)**, the court cited **Parimal -vs- Veena [2011] 3 SCC 545**, that sufficient cause refers to adequate, or enough or and that a party has not acted negligently, or there was want of *bona fide* on its part in view of the facts and the circumstances of a case or the part did not remain inactive or was not diligent.

- 16.** A plausible explanation of not attending court on time has been offered by the plaintiff. I find the application meritorious. The order issued on **26/6/2025** is hereby set aside, with no order as to costs.
- 17.** The application dated **18/2/2025** is to be canvassed by way of written submissions.
- 18.** Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **3rd** day of **December 2025**.

In the presence of:

Court Assistant - Dennis

Mwangi for Macharia for applicant present

Chilaka for Attorney General absent



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