

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ORIGINATING SUMMONS NO. E020 OF 2023 (OS)

ROBERT KURIA MWANGI PLAINTIFF/RESPONDENT

VERSUS

LETSHEGO KENYA LIMITED 1ST DEFENDANT/ APPLICANT

JOSEPH KARUNDU MWANGI 2ND DEFENDANT/ RESPONDENT

LAND REGISTRAR KIAMBU 3RD DEFENDANT/ RESPONDENT

RULING

Introduction

1. This court has been tasked with determining a Notice of Motion Application dated 15th November 2024 which seeks to set aside the orders issued on 11th November 2024 dismissing the suit and to reinstate the Originating Summons dated 8th June 2023.
2. The Applicant invokes the Court's discretion under Order 12 Rule 7 of the Civil Procedure Rules and Article 159(2)(d) of the Constitution of Kenya 2010, urging that this is a matter where substance must prevail over technical default.
3. The application stands on the grounds set out on its face and the supporting affidavit sworn by Robert Kuria Mwangi on even date.
4. The Applicant states that the failure leading to dismissal was neither deliberate nor contumelious, and that barring reinstatement would extinguish claims that deserve a full and fair hearing. The Applicant invites the Court to consider the gravity of

what is at stake and the absence of prejudice to the opposing parties.

5. The 2nd Respondent through the replying affidavit of their counsel on record, Leonard K. Kirori, sworn on 27th February 2025 takes an opposing view.
6. The 2nd Respondent contends that the reasons advanced for reinstatement fall short of the threshold that would justify reopening the matter. They argue that a litigant who lets their case collapse through inattention should not expect the Court to rescue it without clear and compelling justification.
7. The parties were directed to canvass the application by way of written submissions.

Issues for Determination

8. I have examined the application together with the supporting affidavit, the replying affidavit in opposition, the filed submissions and the relevant authorities.
9. The question before the Court is plain. It is whether the explanation offered by the Applicant is sufficient to resurrect a suit that has been laid to rest, or whether the integrity of procedural order demands that the dismissal stands.

Analysis and Determination

10. Order 12 rule 7 of the Civil Procedure Rules vests the Court with the

jurisdiction to revisit a dismissal made in the absence of a party.

The Rule states that:

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”

11. The discretion exists to serve justice, not to dispense favours to those who falter in their duties.
12. The Constitution fortifies this principle. Article 159(2)(d) requires courts to determine disputes without undue regard to procedural technicalities, but it does not authorise the abdication of orderly procedure. It simply obliges the Court to ensure that process serves justice, and not the reverse.
13. Kenyan jurisprudence has long recognised that the discretion to reinstate a suit is intended to prevent injustice rather than to reward indolence. See ***Sagoo & another v Mesa [2023] KEELC 21475 (KLR)***.
14. Counsel for the Applicant submits that the dismissal arose solely from the inadvertence of previous counsel and that the Applicant bears no personal fault. Moreover, the Applicant contends that on 11th November 2024, he was unable to attend when the matter was called out since he went to pick his brother from hospital.
15. In this regard, reliance is placed on ***Belinda Murai & others v Amos Wainaina [1978] KLR 278***, which held that the error of an advocate should not deprive an innocent litigant of a hearing on

the merits. Similarly, in **Mbogo v Shah [1968] EA 93**, the Court affirmed the fundamental principle that no party should be driven from the seat of justice without being heard, underscoring that procedural lapses must not extinguish substantive rights where the equities favour restoration.

16. The Applicant avers that the dismissal resulted from the inability of his former counsel on record to log into court due to network issues.
17. The Courts have expressed caution regarding technical difficulties as a ground for setting aside dismissals. In **Sagoo & another v Mesa (supra)** the court stated:

“In ordinary circumstances, the reasons advanced by the Plaintiff’s counsel, that of a weak and unstable network connection resulting in inability to log into court would not pass muster. Courts have held severally that for such an excuse to be believable, there needs to be availed sufficient evidence that counsel attempted to log in but was unsuccessful due to an unstable network connection or technical failures.”

18. In the present case, the Applicant relies solely on the averments in the supporting affidavit to explain that his former counsel was unable to log in due to network issues. No independent evidence has been annexed to corroborate these claims.
19. Learned counsel for the 1st Defendant/ Respondent submits that the Plaintiff/ Applicant was aware of the hearing date when the suit was dismissed and has failed to demonstrate sufficient cause as to why

the Court should exercise the discretionary power of reinstatement in his favour.

20. Counsel for the 1st Defendant/ Respondent placed reliance on various authorities urging the court to dismiss the application including: ***Wachira Karani v Bildad Wachira [2016] KEHC 6334 (KLR), Mbali v Villa Care Management Limited [2023] KEELRC 1983 (KLR).***
21. Similarly, learned counsel for the 2nd Defendant/Respondent submits that there is no sufficient reason why the Applicant failed to attend the hearing when the suit was dismissed despite the hearing date being taken by consent of the parties.
22. Nonetheless, the Court is also mindful that the discretion under Order 12 rule 7 is intended to prevent injustice and allow a fair hearing on the merits where possible.
23. The question then becomes whether, despite the absence of corroborating evidence, the averments are sufficiently plausible to warrant the exercise of discretion in favour of the Applicant, and whether any prejudice would result to the Respondents should the suit be reinstated.
24. Notably, the 2nd Respondent does not allege that they would suffer any prejudice as a result of reinstatement. They contend that the reasons advanced by the Applicant are inadequate to justify reinstatement under Order 12 rule 7.

25. While the explanation rests solely on the affidavit and lacks independent corroboration, the principle is clear that a litigant should not be turned away from the seat of justice where the default is excusable and no deliberate fault is attributable to them.
26. The discretion under Order 12 rule 7 exists precisely to prevent procedural misfortune from extinguishing substantive rights.
27. In the exercise of its discretion under Order 12 rule 7 of the Civil Procedure Rules, and guided by Article 159(2)(d) of the Constitution, the Court finds that the dismissal of the Applicant's suit ought to be set aside.
28. The averments in the supporting affidavit, though uncorroborated by independent evidence, establish a plausible explanation that the default was not attributable to any deliberate fault on the part of the Applicant.
29. Justice, not mere procedural formality, demands that the Applicant be afforded an opportunity to be heard on the merits.
30. Accordingly, I allow the application and make the following orders:
- i. The Order of 11th November 2024 dismissing the Plaintiff/ Applicant's Originating Summons be and is hereby set aside***
 - ii. The Originating Summons dated 8th June 2023 is reinstated for hearing.***
 - iii. That the Costs of the application shall be borne by the Plaintiff.***

**Dated, signed and delivered, at Thika this 10th day of December,
2025**

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J. M. ONYANGO
JUDGE

In the presence of:

- 1.** Mr Nyabuti for Dr. Khaminwa for the Plaintiff
- 2.** Mr Ndegwa for Mr Oyando for the 1st Defendant

Court Assistant: Hinga