



**Nyakeriga v Benjamin (SRM) (Sued through the Hon Attorney General);
Makori (Interested Party) (Judicial Review Miscellaneous Application
E014 of 2021) [2025] KEHC 18272 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18272 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E014 OF 2021
PN GICHOHI, J
DECEMBER 9, 2025**

BETWEEN

BEATRICE MWANGO NYAKERIGA APPLICANT

AND

**HON LIMO BYSON BENJAMIN (SRM) (SUED THROUGH THE HON
ATTORNEY GENERAL) RESPONDENT**

AND

SARAH KWAMBOKA MAKORI INTERESTED PARTY

RULING

1. The Applicant filed the Notice of motion dated 6th March, 2025 under certificate of urgency and expressed under sections 1A, 3, 3A and 80 of the Civil Procedure Act (Cap 21) Laws of Kenya, Order 12 rules 3 &7, Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules and Articles 48 and 159 of the Constitution of Kenya, seeking for the following Orders;-
 1. Spent.
 2. This Honourable Court be pleased to allow the instant application and whereby the orders given by the court on the 4th December 2024 for the striking-out, terminating and/or dismissing the suit herein for want of prosecution be set aside and the suit be reinstated and placed before the Honourable Court for direction.
 3. The Applicant be given an opportunity to have the matter commence from where it halted and a determination thereof be made based on the merits of the produced evidence and the relevant laws.
 4. Costs of the application be provided for in the cause.



2. The Application is grounded upon the Notice of Motion and is supported by the Affidavit of the Applicant sworn on even date. The Applicant confirms that the substantive suit was struck out, terminated, and/or dismissed for want of prosecution and the file marked as closed on the 4th day of December 2024.
3. The Applicant strongly asserted that the dismissal was not determined on the merits of the case. It was stated that the failure to prosecute was not deliberate but was directly caused by an unexpected failure in internet connectivity during the virtual hearing, leading to an involuntary drop-out from the court proceedings.
4. The Applicant clarified that, despite the disruption, her advocate was, in fact, logged into the official virtual link on the 4th of December 2024 when the dismissal order was issued. She maintained that they have demonstrated diligence and vigilance in taking active steps to prosecute the case up until the moment the striking-out orders were made.
5. It is contended that the dismissal has greatly prejudiced and irreparably affected the interests of justice for the Applicant, leaving them without a substantive remedy. She invoked the inherent jurisdiction of the Honourable Court to make such orders as are necessary to secure the ends of justice and to prevent the abuse of the court process, thereby guaranteeing access to justice under the Constitution.
6. Finally, the Applicant argued that should the reinstatement orders not be granted, the interests of justice will suffer irreparably, whereas any prejudice to the Respondent can be adequately remedied by an appropriate order for compensation in costs.
7. Mr. E. O Nyakeriga, for the Applicant confirmed vide an Affidavit of service dated 14th May, 2025 that he served the Mention Notice of 14th May, 2025 upon the Respondent on the same day, through the Attorney general chambers official email address, agnakurulitigation@gmail.com which is the email through which correspondence had previously been done. However, that no response was filed and thus the Application is unchallenged.

Determination

8. From the Application and the supporting Affidavit, the only issue for determination is whether the Applicant has established sufficient grounds to set aside the dismissal orders and have the suit reinstated.
9. The law governing the reinstatement of suits that have been dismissed is contained under Order 12 Rule 7 of the Civil Procedure Rules. This rule grants the Court a discretionary power to set aside the dismissal order on such terms as may be just. For avoidance of doubt, Order 12 Rule 7 of the Civil Procedure Rules provides 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.”
10. The courts have set out the factors that are to be taken into account, in such cases. In *Ivita v Kyumbu* [1984] KLR 441 (Chesoni, J), the considerations were said to include whether the delay is prolonged and inexcusable; whether justice can be done despite the delay; justice is justice for both sides, and so the positions of both sides must be considered; whether the other side would be prejudiced, by justice not being done by the prolonged delay; and the reasons given for the delay.
11. Whether to reinstate a dismissed suit would call for exercise of discretion in line with Articles 50 and 159 of the Constitution, and the oxygen principle in Sections 1, 1A and 3A of the Civil Procedure Act.



However, such discretion ought to be exercised judicially. In regard exercise of discretion, the Court in case of *Shah v Mbogo & another* [1967] EA 1116, Harris J stated:-

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

12. In this case, the Applicant argued that they logged in to the virtual court, however due to internet connectivity issue, the call dropped and thus the Court dismissed the suit for want of prosecution. This Court notes that the Applicant herein has been relatively proactive in prosecuting the Application herein. The Applicant was present on 12/5/2025 and 7/7/2025, trying to prosecute this matter and the only time that they were not available was the date of the dismissal of their application.
13. The reason given for failure to attend Court is reasonable and therefore the discretion of this Court is in favour of Applicant herein.
14. The Application dated 6th March, 2025 is hereby allowed in the following terms:-
 1. The orders issued by this Court on the 4th December 2024 marking the matter as abandoned and filed closed under Section 1 A and 1B of the *Civil Procedure Act* are hereby set aside.
 2. The matter is hereby be reinstated.
 3. Applicant be given an opportunity to have the matter determined on merits.
 4. Parties to confirm compliance with Court’s directions 29th June 2022 by Prof. Ngugi J (as he then was) and further directions by A. Odera J issued on 21st June 2023.
 5. Parties to take a date for mention within two weeks for directions.
 6. Costs of the Application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF DECEMBER, 2025.

PATRICIA GICHOCHI

JUDGE

In the presence of:

N/A for the Applicant

N/A for the Respondents

Kamau, Court Assistant

