



REPUBLIC OF KENYA



Omaroro & another v Kukuni & 2 others (Environment and Land Case 31 of 2017) [2025] KEELC 8688 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8688 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE 31 OF 2017
LN GACHERU, J
DECEMBER 11, 2025**

BETWEEN

JAMES MANWAH OMARORO 1ST PLAINTIFF

JANE NYAKERARIO OMARORO 2ND PLAINTIFF

AND

LEMERIA OLE KUKUNI 1ST DEFENDANT

OWEN KEITH HEINRICH 2ND DEFENDANT

DISTRICT LAND REGISTRAR 3RD DEFENDANT

RULING

1. The Plaintiffs/Applicants, James Manwah Omaroro and Jane Nyakerario Omaroro, filed this Notice of Motion Application dated 6th August 2024, brought under Order 51 Rule 1, Order 40 Rule 7, Order 5 Rule 16 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3A, and 63E of the [Civil Procedure Act](#), Article 159(2)(d) of [the Constitution](#) of Kenya, 2010, and sought for the following orders;
 - i. That the court be pleased to set aside, vary, and/or review its order made on 15th November 2017.
 - ii. That the court be pleased to reinstate the Plaintiffs' suit for hearing and disposal
 - iii. That the costs of the application be in the cause.
2. The application is premised on the grounds stated on its face, and the Supporting Affidavit of Applicants, James Mwanwah Omaroro and Jane Nyakeraria Omaroro. In their Supporting Affidavit sworn on 6th August 2024, the Plaintiffs/Applicants averred that the suit was dismissed for want of prosecution on 15th November 2017, but they were unaware of the dismissal as they were not served with the hearing notice.



3. They further averred that the 1st and 2nd Defendants' Advocate misrepresented himself as representing the Plaintiffs during a court appearance on 26th September 2017. Additionally, the Plaintiffs/Applicants were not informed about the transfer of their case from Nakuru Environment and Land Court to Narok Environment and Land Court, as the notification was sent to Messrs, Orina & Co. Advocates, the Law Firm that was not representing them.
4. The Applicants alleged that their advocate at the time, Ogola H. J. Okeke Advocates, filed a Notice of Withdrawal of the suit in Nakuru in 2019, leading to the Plaintiffs to believe that their case had been withdrawn. It was only upon filing of a new application in Narok CMCC Misc. App No. E046 of 2022, that the Plaintiffs/Applicants learned that their case had been dismissed.
5. The Plaintiffs/Applicants argued that there are multiple errors on the court record, and pleaded for the reinstatement of their suit to allow them their day in court, as provided under Article 50 of *the Constitution* of Kenya, 2010. They also explained that the delay in filing the current application was due to their honest belief that the suit had been withdrawn in Nakuru, and they were unaware of its transfer and subsequent dismissal.
6. The Plaintiffs/Applicants emphasized that it is in the interest of justice to grant the orders sought, as they are ready and willing to prosecute the suit to its logical conclusion. Supporting documents, including the dismissal order, notice of change of advocates, notice of withdrawal, and other relevant correspondence, were annexed to substantiate their claims.
7. The Application is opposed through the Replying Affidavit sworn by Martine Ole Kamwaro, the advocate for the 1st and 2nd Defendants/Respondents, who averred that the Plaintiffs/Applicants failed to properly cite relevant legal provisions in their Application, demonstrating poor drafting and lack of attention to detail.
8. The deponent averred that the Plaintiffs/Applicants should have relied on Order 12 Rule 7 of the Civil Procedure Rules, which provides that a court may set aside or vary a judgment or dismissal order upon just terms. Further, that the dismissal of the suit for want of prosecution was justified, as litigation must be expedited to ensure justice and prevent delays, in line with the legal maxim "justice delayed is justice denied."
9. Further, it was deposed that the Plaintiffs/Applicants filed Succession Miscellaneous Application No. 1 of 2017, regarding the estate of the late Lemeria Ole Kukuni, the 1st Defendant/Respondent, and were aware of his demise. However, they failed to substitute the deceased, leading to the abatement of the suit against him by operation of law. The suit was dismissed on 16th November 2017, for want of prosecution, and the Plaintiffs/Applicants were informed of this dismissal in Narok Chief Magistrate's Court Misc. Application No. E046 of 2022, but took no action to reinstate the suit until 2024.
10. The deponent further averred that the Plaintiffs/Applicants have been negligent and indolent in prosecuting their case, failing to attend court on multiple occasions and not taking steps to substitute the deceased 1st defendant. That the Plaintiffs/Applicants lost interest in the suit after filing it and that their claim of pursuing an out-of-court settlement is unsubstantiated.
11. The 2nd Respondent refuted that the Plaintiffs/Applicants' claim that the notice of dismissal was not served, stating that the Plaintiffs' advocates had a duty to diligently follow up on the status of their case. The 2nd Respondent contended that the Plaintiffs/Applicants have not provided sufficient reasons to justify the reinstatement of the suit, and the application is deemed incompetent, an abuse of court process, and a waste of judicial time.



12. The Plaintiffs, James Manwah Omaroro and Jane Nyakerario Omaroro, filed a Supplementary Affidavit, wherein they averred that they have sought for the reinstatement of ELC Cause No. 31 of 2017, formerly Nakuru ELC Cause No. 217 of 2013. They argued that the Defendants' Advocate, Mr. Martine Ole Kamwaro, misled the Court on 26th September 2017, by stating that he represented the Plaintiffs/Applicants, which led to the dismissal of the suit for want of prosecution. The Plaintiffs/Applicants urged the Court to review the proceedings of that date, which they annexed as "JM 1," to confirm this misrepresentation.
13. The Plaintiffs/Applicants further contended that the Defendants' Advocate failed to serve a hearing notice upon their former Advocates, Ogola H. J. Okeke Advocates, after the case was transferred from Nakuru to Narok. They also contended that the transfer letter was addressed to Orina & Co. Advocates, who were no longer on record for them, and argued that the Defendants/Respondents' Counsel has not made efforts to set the record straight.
14. Additionally, the Plaintiffs/Applicants stated that they were engaged in negotiations with the Defendants/Respondents to promote alternative dispute resolution mechanisms and issued a Notice of Withdrawal of Suit dated 7th May 2019. They claimed that the Defendants/Respondents acknowledged receipt of this notice, leading them to believe the matter had been marked as withdrawn. However, they later discovered that the file had been transferred to Narok without their knowledge.
15. The Plaintiffs/ Applicants invoked Article 159(2)(d) of *the Constitution* of Kenya, 2010, which emphasizes that justice should be administered without undue regard to procedural technicalities. They also relied on Article 50 of *the Constitution*, which guarantees the right to a fair hearing. They asserted that they have never lost interest in the matter and have been ready, able, and willing to prosecute the case to its logical conclusion.
16. In light of these arguments, the Plaintiffs/Applicants urged the Court to reinstate the suit and prioritize its hearing to ensure the matter is determined on merit.
17. The Application was canvassed through written submissions. The Plaintiffs/applicants filed their submissions dated 13th December 2024 and Further submissions dated 7th July 2025, through Ondabu & Co Advocates.
18. In their written submissions in support of the instant application which seeks for orders to set aside, vary, or review the court's dismissal of their suit on 15th November 2017, for want of prosecution, and to reinstate the suit for hearing and disposal, the applicants argued that they were not served with the hearing notice for the dismissal date and were unaware that their case had been transferred from Nakuru to Narok.
19. It was their further submissions that the letter informing them of the transfer of the suit from Nakuru to Narok ELC was sent to the Law Firm not representing them, and their advocates on record, Messrs. Ogola H. J. Okeke Advocates, were not informed of the transfer or dismissal of the suit.
20. It was further submitted that the Plaintiffs/Applicants genuinely believed that their case had been withdrawn in Nakuru, and only learned of the dismissal after filing a new application in 2022. They cited the provisions of Order 12 Rule 7 and Rule 6 of the Civil Procedure Rules, 2010, which allow for the setting aside or reinstatement of dismissed suits.
21. The Plaintiffs/Applicants also relied on case law, including *Mwangi S. Kimenyi v Attorney General & Another* and *Markroscar Kenya Limited v Goodhope Christian Church Kasarani & 12 Others* [2021], which emphasized the importance of sustaining suits and exercising judicial discretion to ensure justice.



22. The Plaintiffs/Applicants further invoked Articles 50 and 159(2)(d) of *the Constitution* of Kenya, 2010, which guarantee the right to a fair hearing and the resolution of disputes without undue regard to procedural technicalities. They submitted that the application is merited and argued the court to allow it, granting them an opportunity to have their case heard on its merits.
23. The Plaintiff/Applicants issued a Notice, dated 26th March 2025, to Kamwaro & Co. Advocates, which Notice required the attendance of Martine Ole Kamwaro in court for cross-examination on 31st March 2025, regarding the contents of his Replying Affidavit sworn on 27th January 2025.
24. Mr Martine Ole Kamwaro Advocate was cross examined on his Replying Affidavit by Mr Ondabu Advocate for the Plaintiffs/Applicants on 10th June 2025, wherein he confirmed that he has always acted for the Defendants, and not for the Plaintiffs at all. He also stated that he was not aware of what the court had recorded on 26th September 2017, and he cannot be blamed for what the court recorded on the material date.
25. In their Further submissions, the Plaintiff/Applicants submitted that the Applicants James Manwah O'Maroro and Jane Nyakerario Omaroro, seek to reinstate a suit that was dismissed for want of prosecution on 15th November 2017, for their non-attendance in court. That the suit, was originally filed in 2007 as Civil Suit No. 181 of 2007, was later transferred to Narok Environment and Land Court and renumbered as ELC No. 31 of 2017.
26. The Plaintiffs/Applicants submitted that they were unaware of the dismissal, but the 2nd defendant submitted that the Plaintiffs were notified of the transfer and dismissal, and had even filed a Notice of Withdrawal of the suit on 7th May 2019, indicating they no longer wished to pursue the matter.
27. The Plaintiffs/Applicants' further argued that the 2nd Respondent's opposition to the instant application does not assist the Court in making a fair and just decision. It was their further submissions that this Court (constituted differently) dismissed the suit on 16th November 2017, due to the absence of the Plaintiffs' Counsel, despite the fact that Mr. Kamwaro, who appeared for the Plaintiffs on 26th September 2017, represented the 1st and 2nd Defendants on 15th November 2017.
28. Further, that this conduct was deemed unbecoming for an Officer of the Court with 22 years of experience. They contended that on 10th June 2025, Mr. Kamwaro admitted to an error apparent on the record, stating that he was recorded as appearing for the Plaintiffs on 26th September 2017, but he was actually representing the Defendants. He further admitted to failing to serve the Plaintiffs or their Advocates with a hearing Notice for 15th November 2017, and did not file an Affidavit of Service.
29. The Plaintiffs argued that the hearing date was given in open Court on 26th September 2017, in their absence, and service was not effected upon them or their Counsel, which led to their non-attendance on 15th November 2017. They relied on the case of *Salim Alhmed Ali & Anor Vs EMAG G [2006] eklr*, wherein the Court stated that dismissal without evidence of service upon the Plaintiff's Counsel would be unjust.
30. The Plaintiffs/Applicants further argued that the cases relied upon by the 1st and 2nd Defendants are irrelevant to the issue of service. They urged the Court to reinstate the suit and grant them an opportunity to be heard under Article 50 of *the Constitution* of Kenya, 2010.
31. The 2nd defendant filed his submission through Kamwaro & Co Advocates, who submitted that the Plaintiffs/Applicants failed to diligently follow up on their case and have not provided sufficient justification for the seven-year delay in seeking reinstatement.



32. The 2nd Respondents relied on various legal precedents, including *Ivita vs. Kyumbu* [1984] KLR 441, *Nzoia Sugar Company Limited v West Kenya Sugar Limited* (2020) eKLR, *Edney Adaka Ismail vs Equity Bank Limited* [2014] eKLR, *Savings and Loans Limited v Susan Wanjiru Muritu Nairobi (Milimani)* HCCS No. 397 of 2002, and *Mobile Kitale Service Station vs. Mobil Oil Kenya Limited & another* [2004] eKLR.
33. The provisions of law cited include Order 51 Rule 1, Order 40 Rule 7, Order 5 Rule 16, and Order 12 Rule 7 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3A, and 63(e) of the *Civil Procedure Act*, and Article 159(d) of *the Constitution* of Kenya, 2010.
34. The 2nd Respondent further submitted that the Plaintiffs/Applicants have been indolent, guilty of laches, and have not demonstrated tangible steps to follow up on the case, urging the court to dismiss the application with costs.
35. It was also submitted that the 1st Defendant died during the pendency of this suit on 24th January 2016, but the Applicants have never sought to substitute the 1st Defendant, and thus the suit has abated against the 1st Defendant by operation of law.
36. Further, even if the Plaintiffs/Applicants alleged that the Notice of dismissal was not served upon them, the Plaintiffs and their advocates had the onus of checking on the status of their case diligently at all times, since it was the Plaintiffs who had filed the case and it was incumbent upon them to follow up with their counsel on its status.
37. The above are the grounds in support of the instant Application, and the grounds against the same. The court has also considered the rival written submissions and the cited authorities and renders itself as follows; -
38. There is no doubt that the suit herein was filed in 2007 at Nakuru High Court, as Civil Case No 181 of 2007. The suit was later transferred to Nakuru ELC and was given No 217 of 2013. From the court proceedings, the matter was placed in court severally without any evidence having been taken.
39. With the establishment of Narok Environment and Land Court the suit was transferred to this Court as Narok ELC NO 31 of 2017. After the transfer, the matter was mentioned in court several times, until when it was dismissed on 15th November 2017, for non-attendance of the Plaintiffs.
40. From the court record, it is evident that on 2019, the Plaintiffs/Applicants filed a Notice of Withdrawal of the suit through its Advocates Ogola. H. J. Okeke under Order 25 Rule 1 of the Civil Procedure Rules, which states;

“Withdrawal by plaintiff [Order 25, rule 1.] At any time before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.”
41. By virtue of the Notice of Withdrawal referred above, the suit herein stands withdrawn. It is trite that once the Plaintiff has filed a Notice of withdrawal, he cannot simply revoke the withdrawal, since once the suit is discontinued, it ceases to exist in its current form and cannot be reinstated. See the case of *George Mwangi Kinuthia vs Attorney General* (2019) eKLR, where the court held that;

“It follows a party who withdraws his suit cannot seek to reinstate the same but a party withdrawing a suit has an option of instituting a fresh action as per provisions of Order



25 Rule 4 of the Civil Procedure Rules, The order and rule herein above do not envisage a litigant who has withdrawn the suit to seek a reinstatement; as a withdrawal means there is no suit pending anymore. In view of the above it is my view once a suit has been withdrawn there is nothing that can be sought to be reinstated.”

42. There is also an allegation by the 2nd Defendant that the 1st Defendant died during the pendency of this suit, and he has not been substituted. That being the case, the suit against the 1st Defendant abated by operation of law as provided by Order 24 rule 4(1) of the *Civil Procedure Act*.

43. Order 24 rule 4(1) and (3) of the CPR provides;

“(1) 1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(3) 3) Where within one year no application is made under sub rule (1), the suit shall abate as against the deceased defendant.”

44. With the above background, the issue for determination is whether the instant Application is merited.

45. From the Replying Affidavit of the 2nd Respondent, and his submissions, he averred and argued that the instant Application is brought under Order 51 Rule 1, Order 40 Rule 7, Order 5 Rule 16 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 63E of the *Civil Procedure Act*, Article 159(2)(d) of *the Constitution*, which provisions of law do not deal with the issue of setting aside orders of the court.

46. It was his argument that the suit having been dismissed, the correct provisions to bring the instant Application is Order 12 Rule 7 of the Civil Procedure Rules, which provides;

“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.”

47. The court has considered this argument by the 2nd Respondent, and the cited provisions of law. Indeed, the Application ought to have been brought under Order 12 rule 7 of the Civil Procedure Rules, where the court has discretion to set aside or vary the judgment or order on such terms as may be just.

48. However, the Applicants also brought their Application under Sections 1A, 1B and 3A of the *Civil Procedure Act*, which provisions of law deal with the Overriding Objective of the Act, which is to facilitate just, expeditious, proportionate and affordable resolution of disputes before it. Further, under Section 3A, the court has power to issue orders that are necessary for the end of justice to be met.

49. Further Order 51 Rule 10(1) of the Civil Procedure Rules states that though the specific law, order, or rule under which an application is made should be stated, failure to cite the rule will not cause the application to be defeated if it does not affect the substance of the application. Therefore, this means that technicalities or minor errors in form should not defeat an application.

50. The court too will rely on the provisions of Article 159(2)(d) of *the Constitution* which oblige the court not to focus so much on technicalities at the expense of substantive justice. Therefore, this court finds and holds that though the Plaintiffs/Applicants failed to anchor their Application under Order 12 Rule 7 of CPR, relying on sections 1A, 1B and 3A of the *Civil Procedure Act*, is enough, and the said failure was on form, but not on the substance of the Application.



51. The said objection by the 2nd Respondent is overlooked by this court, given that the provisions of Order 51 Rule 10(1) of the Civil Procedure Rules provides that no application shall be refused or objected to merely because the applicant failed to state the provision of law under which the application was made.
52. On the substance of the Application, the Plaintiffs/Applicants have sought for setting aside the order of dismissal of the suit made on 15th November 2017, and reinstatement of the suit, due the fact that the Plaintiffs/Applicants were not aware of the suit coming for hearing on the material day, and the fact that on 26th September 2017, Mr Kamwaro had misrepresented himself as appearing for the Plaintiffs, and when a hearing date was taken, he did not inform them of the hearing date.
53. Further, that the Plaintiffs were not even aware that this suit had been transferred from Nakuru Environment and Land Court to Narok Environment and Land Court, and that on the hearing date when the suit was dismissed, Mr Kamwaro appeared for the Defendants and he had not sent a hearing Notice to the Plaintiffs/and/or their Advocates.
54. From the court record, it is evident that this suit was filed in the year 2007, at Nakuru High Court before the establishment of the ELC. With the enactment of *the Constitution* of Kenya 2010, and establishment of ELC, the suit was transferred to ELC in Nakuru in 2013, and was given a new number being ELC 217 of 2013.
55. The Environment and Land Court is governed by the provisions of the Civil Procedure Rules, and in Sections 1A and 1B, the court is mandated to facilitate expeditious disposal of suits before it. Further, Section 1B, imposes a duty on every party to a suit to assist the court in ensuring the Objectives of the Act have been met.
56. Therefore, every party in this suit had a duty to ensure that the suit is heard expeditiously, without delays as justice delayed is justice denied.
57. The Plaintiffs/Applicants appointed the Laws Firm of Ogola H. J. Okeke Advocates on 18th March 2016, and on 7th November 2016, Mr Okeke for the Plaintiffs informed the court, that the 1st Defendant is deceased, and he sought for the matter to be mentioned 15th June 2017, which date was granted.
58. On 15th June 2017, the matter had been transferred to Narok Environment and Land Court, but a Mr Kilele appeared for the Plaintiffs, and informed the court that there was an application for substitution which was slotted for hearing on 11th July 2017. Therefore, the Plaintiffs cannot allege that they were not aware that the suit herein had been transferred from Nakuru Environment and Land Court to Narok Environment and Land Court.
59. Further, it is evident that the 1st Defendant died sometime in 2016. He has not been substituted, and the suit against him abated by operation of law as provided by Order 24 Rule 4(3), Civil Procedure Rules therefore no suit can be reinstated against a deceased person.
60. It is trite that a suit dismissed for want of prosecution can be reinstated by filing an application under Order 12 Rule 7 of the Civil Procedure Rules and/ or Section 3A of the *Civil Procedure Act*, and the court has the discretion to reinstate the suit. however, the applicant must demonstrate "sufficient cause" for the delay, show that the delay was not prolonged or inexcusable, and provide that justice can still be done for both parties. See the case of *Ivita vs Kyumbu*(supra).
61. In the instant suit, the suit was dismissed on 16th November 2017, and this Application for reinstatement of the suit was filed on 6th August 2024, which is after a period of 7 years since the suit was dismissed. The Plaintiffs/Applicants averred that they were not aware that the suit had been transferred



- to Narok ELC, from Nakuru ELC. However, from the court record on 15th June 2017, a Mr Kilele appeared for the Plaintiffs/Applicants and informed the court that there was an application pending for substitution of the 1st Defendant. It is clear that the Plaintiffs were aware that the matter had been transferred to Narok Environment and Land Court.
62. On 11th July 2017, Mr Kilele appeared again for the Plaintiffs and informed the court that the application for substitution was still pending, and the matter was given a mention date for 26th September 2017. On 26th September 2017, when the matter came up for mention, the court recorded the Coram and Mr Kamwaro was indicated to be appearing for the Plaintiffs.
63. Though the Plaintiffs blamed Mr Kamwaro for having misled the court, it is evident that court record is taken by the court, and this court will concur with Mr Kamwaro that he was not privy to what the court recorded, and this court cannot hold with certainty that indeed Mr Kamwaro misled the court.
64. It is not in doubt that cases belong to parties, and a party has a duty to pursue the progress of its case in court. A case is not filed, and then left to pack in the registry without any action. The Judiciary Performance Management and Measurement Understanding (PMMU), requires a case to be decided by the court within a period of 360 Days. After 360 days, the case becomes a backlog, and the court has a duty to reduce backlog of cases within its registry.
65. On 26th September 2017, the court recorded that the suit had been in court for long, and fixed the suit for hearing on 15th November 2017, on which date the Plaintiffs were absent, and so was their advocate. Consequently, the suit was dismissed under Order 12 Rule 3 of Civil Procedure Rules, which state;
- (1) If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.
 - (2) If the defendant admits any part of the claim, the court shall give judgment against the defendant upon such admission and shall dismiss the suit so far as it relates to the remainder except for good cause to be recorded by the court.
 - (3) If the defendant has counterclaimed, he may prove his counterclaim so far as the burden of proof lies on him.”
66. Since the mention date of 26th September 2017, was taken in the presence of Mr Kilele appearing for the Plaintiffs, the Plaintiffs and/or their advocate should have take a keen interest to know what happened on this mentioned date. The Plaintiffs failed to do so, and only came to court 7 years.
67. Further, it is clear that on 7th May 2019, Mr Okeke, appearing for the Plaintiffs filed an application to withdraw the instant suit wholly. Even if by that time the suit had been dismissed, the applicant cannot seek to reinstate a wholly withdrawn suit.
68. It is clear that dismissal of suits for want of prosecution is invoked when there is delay in getting the suit prosecuted. The overriding principle is the fact that there ought to be no delay in the dispensation of justice, based on the maxim that justice delayed is justice denied. Indeed, litigation must be expedited and concluded by the parties, as there can be no justice in filing a cause in court, and then leave it parked there, unprosecuted, hanging over the head of the other party like the sword of Damocles. See the case of *Olumbe vs Obanyi*(Civil Appeal No.e014 of 2024) (2025) KEHC 5386(KLR)(30th April 2025) Judgment.



69. Further, dismissals help in clearing backlogs in court, created by parties who file cases and later lose interest to prosecute these cases. Pendency of unmoving cases create backlog which clog the justice system, a crisis of public mistrust and lack of confidence in the Judiciary.
70. Courts have set out the factors that are to be considered while considering whether to reinstate a suit or not. In the case *Ivita v Kyumbu* [1984] KLR 441, 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.
71. Further, whether to reinstate a dismissed suit or not to reinstate is an exercise of judicial discretion. The court too considers the provisions of Articles 50 and 159 of *the Constitution*, and the Sections 1, 1A and 3A of the *Civil Procedure Act*. In the case of *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR [2015] KEHC 6789 (KLR) the court discussed the fundamental principles of justice are enshrined in Articles 50 and 159 of *the Constitution*, with respect to the right to be heard, and to serve substantive justice to all. The court underscored that those principles ought to be factored when considering reinstatement of dismissed suits, bearing in mind that dismissal of suits is draconian.
72. In this case, the suit was filed in 2007, and was dismissed under Order 12 Rule 3 of Civil Procedure Rules, on 15th November 2017. The Plaintiffs applicants did not bother to check the progress of their case for a period of 7 years. They blamed the Counsel for the Defendants for failure to serve them with a hearing Notice, but even if that was the case, why did they park their case for 7 years without action?
73. Further, the Plaintiffs had filed a NOTICE to withdraw the suit on 7th May 2019, and served it upon the Defendants advocates as provided by Order 25 Rule 1, of the Civil Procedure Rules which Notice was filed two years after the suit had been dismissed, and they did not bother to check the position of the suit before filing the said Notice of withdrawal.
74. Courts have severally held that suits belong to litigants, who have a duty to pursue prosecution of their cases to the end, and to constantly check with their advocates on the progress of their matters. See the case *Duale Mary Anne Gurre v Amina Mohamed Mahamood & another* [2014] eklr.
75. As provided by the Oxygen principles, it is also the duty of the parties to assist the Court to adjudicate on the matters brought before it expeditiously. This was held so in the case of *Thomas Mwaura Gitau & Anor. vs Eric Muhati & 2 Others* [2012] eKLR wherein the court quoted from the finding in the case of *Mobil Kitale Service Station vs Mobil Oil Kenya Ltd HCCC No. 205 of 1990* (unreported), where the court held as follows:
- “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 of matters expeditiously.”
76. Having carefully considered the instant Notice of Motion Application dated 6th August 2024, the rival written submissions, cited authorities and relevant provisions of law, this court finds and holds that the Plaintiffs/Applicants have not given any sufficient reasons as to why they delayed in filing this Application for reinstatement of the dismissed suit.
77. The court finds the instant application is not merited, and consequently, the said Application is dismissed entirely with costs to the 2nd Defendant/Respondent. The suit stand dismissed!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 11TH DAY OF DECEMBER 2025.



L. GACHERU

JUDGE.

Delivered online in the presence of

Elijah Meyoki – Court Assistant

Mr Ondabu for Plaintiffs/Applicants

Mr Kipela for 2nd Defendant/Respondent

N/A for 1st Defendant/Respondent

N/A for 3rd Defendant/Respondent

