

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC NO E191 OF 2018

HASHIM NGONGE LOMA MAKAZI
PLAINTIFF

VERSUS

ABDIRAHMAN ABDILLAHI & 5 ORS
DEFENDANTS

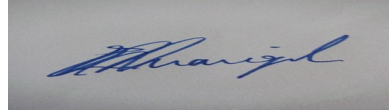
RULING

1. The application dated 16th June 2025 seeks an order that the order issued on 16/6/2025 dismissing the suit for want attendance be set side and the matter be reinstated for hearing on the merits. The application is supported by the affidavit of the plaintiff's advocate, **Maurice Mkan**, sworn on even date.
2. The grounds on which the application is made are set out at its foot. They are that the matter was coming up for hearing of the main suit on 16th June 2025 and there was a blackout in the applicant's area and his failure to attend court was not deliberate.
3. The application is opposed. The 3rd defendant filed the sworn replying affidavit of its director, one Julius Kamau Mwangi dated 25th November 2025. He points out, crucially so, that the suit was not dismissed for want of attendance but for want of compliance with court orders. He avers that the plaintiffs suit ought not to be reinstated as he was not vigilant enough.

ANALYSIS AND DETERMINATION.

4. The application before me is misconceived, just as has been pointed out by the 3rd defendant. On the date of the impugned dismissal, this court was more interested in the fact that the plaintiff should comply with its orders to enable the suit to progress to its conclusion, and want of attendance, though instrumental in kicking in the order of dismissal for want of compliance, was not the main issue that moved the court on 16/6/2025 when the matter was dismissed. The main issue that prompted dismissal was that the plaintiff had not complied with court orders issued earlier. When the court discovered the default, it dismissed the suit on the ground of that omission alone. It never mentioned lack of attendance as a ground of dismissal.
5. It would be rare that a court would dismiss a suit on a mention date owing to lack of attendance alone. Lack of compliance with court orders can prompt dismissal of a suit at any stage even in the presence of counsel if the court is minded that it is militating against the overriding objective of expeditious disposal of litigation.
6. As the applicant has approached court under the wrong premise that the matter was dismissed for *want of attendance*, he consequently he has not explained his *want of compliance with orders of the court* made earlier. This court is thus unable to consider the application before it as it seeks the wrong orders and fails to address or explain the appropriate issue that occasioned the dismissal. The application dated 16/6/2025 is hereby struck out with costs to the defendants.

**Dated, signed and delivered at Malindi on this 18th day of
December 2025.**

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**