



**Serem v Rotich (Environment and Land Case 347 of 2013)
[2026] KEELC 190 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 347 OF 2013**

CK YANO, J

JANUARY 22, 2026

BETWEEN

JOSEPH KIPTANUI SEREM PLAINTIFF

AND

RUTH CHEPKIRONG ROTICH DEFENDANT

RULING

1. Vide a Notice of Motion Application dated 14th May, 2025, the Plaintiff/ Applicant sought the following Orders: -
 1. That this Honourable Court be pleased to reinstate the suit herein which was dismissed for want of prosecution on 12th May, 2025.
 2. That the suit be restored for hearing and be heard on its merits.
 3. That the costs of this application be provided for.
2. The application is premised on the 5 grounds on the face thereof and on the applicant's Supporting Affidavit sworn on even date.
3. He acknowledged that the matter was scheduled for defence hearing on the 12.05.2025. However, on the said date, his advocate on record was unable to log into and be admitted into the virtual session due to the confusion of the virtual links for the online court session.
4. He further stated that his advocate on record informed him that there has been two links to this court; that the link contained in the judicial e-cause list is <https://bit.ly/3EdyBF9> whereas the link contained in the Bar Bench group is <https://tinyurl.com/rmt3jpuv> and which has in turn created confusion. He annexed copies of the links as contained in the e-cause list and the Bar Bench group to support his assertion.



5. He went further to explain that his advocate on record used the link contained in the e-cause list but was not admitted into the court session and it is then that he realized that there was a different link for the same court. However, when he used the other link to log in, he was informed that the court had already called out the matter and in the absence of both parties, the same was dismissed for want of prosecution.
6. It was therefore his contention that the non-attendance was not deliberate or due to negligence but was caused by a genuine misunderstanding of access links for the virtual session. He thus maintained that in the interest of justice, it would be fair to allow the application and hear the matter on merit and to uphold the applicant's right to a fair hearing.
7. It was further his claim that no prejudice would be occasioned to the respondent if the application is allowed and the suit reinstated as provided under Order 12 Rule 7 of the Civil Procedure Rules, 2010.
8. In conclusion, he stated that the application had been filed timely and made in utmost good faith and the same should therefore be allowed as sought in the interest of justice.
9. The application was not opposed. Despite the defendant/respondent being served with the application and an affidavit of service filed to that effect, she did not file any response to the application or attend court for the interpartes hearing of the application.
10. On 07.10.2025, this court issued directions that the Application be canvassed by way of written submissions. However, on 17.11.2025, when the matter came up to confirm compliance, Ms. Chumo, advocate for the applicant informed the court that they are yet to receive any response and, in the circumstances, they will not be filing any submissions but will be relying on the grounds in the application and the supporting affidavit and urged the court to allow the application as sought.
11. I will therefore proceed to render my decision as hereunder;

Analysis and Determination:

12. I have carefully considered the grounds in the application and in the supporting affidavit together with the annexure thereto in totality. Consequently, it is my considered view that the following issues arise for determination: -
 - i. Whether the dismissal order issued on 12.05.2025 can be set aside and the suit be reinstated and be heard on merit.
 - ii. Who shall bear the costs of the application

Whether the dismissal order issued on 12.05.2025 can be set aside and the suit be reinstated and be heard on merit;

13. It is common ground that the present suit was dismissed for want of prosecution and/or non-attendance on 12.05.2025, when the same came up for hearing but there was no attendance by both the plaintiff and the defendant or their counsel on record. The instant application thus seeks to have the suit reinstated and be restored for hearing and determination on merit.
14. Order 12 Rule 7 empowers the court to set aside a dismissal order and reinstate a suit dismissed for non-attendance and/or want of prosecution. Order 12 Rule 7 provides as follows: -
[Order 12, rule 7.] Setting aside judgment or dismissal.



7. 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.
15. The Court of Appeal in *Richard Ncharpi Leiyagu v Independent Electoral Boundaries Commission & 2 Others* [2013] KECA 282 (KLR) while discussing the reinstatement of suit dismissed for non-attendance cited with approval the Court of Appeal decision in the case of *Philip Chemowolo & Another v Augustine Kubede*, [1982-88] KAR 103 at 1040 Apalo, J.A. (as he then was) where it was held as follows:-
- “Blunder will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merit. I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court as is often said exists for the purpose of deciding the rights of the parties and not the purpose of imposing discipline.”
16. The duty of a court to serve substantive justice cannot be overstated. Further, the right to a fair hearing enshrined under Article 50 of *the constitution* guarantees each party an opportunity to be heard and for a determination of their dispute to be reached on merit and is the cornerstone of the rule of law.
17. The question that therefore follows is whether there exists a just and sufficient cause to warrant the exercise of the court’s discretion in setting aside the dismissal orders and reinstating the suit for hearing.
18. The applicant has attributed the failure of his advocate on record to attend court on the 12.05.2025, when the matter was scheduled for defence hearing, on a confusion of the 2 virtual links for the online court session and thus maintained that the non-attendance was not deliberate or out of negligence.
19. The decision of whether a suit should be reinstated is a matter of justice and depends on the facts of the case. I have carefully considered the explanation tendered by the applicant for the non-attendance of his advocate on record and critically looked at the annexures in the supporting affidavit of the 2 links as averred and I find that the said explanation is satisfactory and understandable in the circumstances.
20. Further, the applicant filed this application within 2 days of the dismissal of the suit, he thus acted diligently and timeously.
21. No response was filed by the respondent to demonstrate any prejudice that may be occasioned to her in allowing the present application and reinstating the suit as sought and which may not be compensated by an award of costs or at all.
22. In conclusion therefore, this court finds that there exists a just and sufficient cause to warrant the setting aside of the dismissal order issued on 12.05.2025 as sought and for the suit to be reinstated for hearing on and determination on merit.

Who shall bear the costs of the application;

23. It is well settled that costs follow the event unless the court directs otherwise.
24. However, given the nature of the application and the circumstances thereto, I direct each party to bear their own costs of the application.



Conclusion

25. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 14th July, 2025 is merited and is hereby allowed on the following terms: -
- i. The application dated 14.05.2025 be and is hereby allowed.
 - ii. An order be and is hereby issued setting aside the dismissal orders issued on 12.05.2025, dismissing the suit for non-attendance and/or want of prosecution.
 - iii. The plaintiff's suit be and is hereby reinstated for hearing and determination on its merit.
 - iv. Each party to bear their own costs of the application.
26. It is so ordered.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 22ND DAY OF JANUARY, 2026.

HON. C. K. YANO

JUDGE

Ruling delivered in the virtual presence of: -

Mr. Ombati holding brief for Mr. Kirwa for Plaintiff/Applicant.

No appearance for the Defendant/Respondent

Court Assistant – Laban

