



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ELC CASE NO.8 OF 2022

CHEPTANUI SINYEI ROTICH

PLAINTIFF/APPLICANT

= VERSUS =

CHESEREK CHELANGA 1ST

DEFENDANT/RESPONDENT

WILLIAM CHESANG ROTICH 2ND

DEFENDANT/RESPONDENT

JOEL KIPEL.....3RD

DEFENDANT/RESPONDENT

EMILY RUTO 4TH

DEFENDANT/RESPONDENT

JOSHUA KIPKEMEI BARTENGE ... 5TH

DEFENDANT/RESPONDENT

COUNTY LAND REGISTRAR,

ELGEYO MARAKWET 6TH

DEFENDANT/RESPONDENT

LAND SURVEYOR,

ELGEYO MARAKWET 7TH

DEFENDANT/RESPONDENT

R U L I N G

1. This ruling is in respect of the Plaintiff/Applicant's notice of motion application dated 22nd October, 2025. In the application, the Plaintiff/Applicant seeks the following orders:-

a) Spent

b) Reinstatement of his application dated 12th June, 2025 which was dismissed on 6th October, 2025 for want of prosecution;

c) Leave for the firm of M/S Tarigo Kiptoo & Company advocates to come on record for the Plaintiff/Applicant in place of the firm of M/S G.K Kimaiyo which was previously acting for the Plaintiff/Applicant.

2. As can be discerned from the grounds on the face of the

application and the affidavit sworn in support thereof, the application is premised on the grounds that the Plaintiff/Applicant's counsel, did not attend Court on two occasions when the application that was dismissed was slated for hearing leading to dismissal of the application for want of prosecution; that the Plaintiff/Applicant's advocate did not inform the Plaintiff/Applicant about the directions given by the Court on 31st July, 2025 and that failure by the Plaintiff/Applicant's counsel to inform the Plaintiff/Applicant about the directions given by the Court on 31st July, 2025 led to dismissal of the Plaintiff/Applicant's application dated 6th October, 2025 for want of prosecution. Further, that it is prudent, fair and in the interest of justice that the application be allowed.

3. Explaining that she is an old lady who needs to be facilitated to enjoy the fruits of her judgment, the Plaintiff/Applicant contends that no prejudice will be occasioned on the respondents if the application is allowed.
4. The application is unopposed.
5. I have read and considered the circumstances that led to the

dismissal of the application dated 12th June, 2025 which the Plaintiff/Applicants prays that it be reinstated. I have also read and considered the explanation offered by the Plaintiff/Applicant for failure to prosecute the application and the reason given for desiring to have the orders sought granted, to wit to facilitate the judgment issued in favour of the Plaintiff/Applicant.

6. A review of the Court record shows that on the two occasions the dismissed application was listed for mention/hearing, there was no appearance by counsel for the plaintiff/respondent. The Court fixed the matter for hearing without participation of the parties. Ordinarily, when a Court fixes a matter for mention or hearing in the absence of parties, it usually directs that the mention date be notified or served on the parties. Whilst the fact that the application was fixed for hearing in the absence of parties and without requirement that the parties be served with the mention/hearing notice by the Deputy Registrar of the Court, would in appropriate circumstances, entitle the plaintiff/ to the orders sought, a review of the explanation offered by the

Plaintiff/Applicant does not suggest or even demonstrate that the reason for none attendance of her counsel was because her counsel was not aware of the directions given by the Court.

7. The explanation given is that the Plaintiff/Applicant had lost touch with her advocate and that efforts to call him and/or visit his offices were in vain. I find the explanation offered by the Plaintiff/Applicant, especially as relates to alleged attempts to visit her counsel's office which are said to have been in vain, to be incapable of being a plausible explanation to the circumstances leading to the dismissal of the application and/or the delay in filing an application for reinstatement of the dismissed application. I say so because I fail to understand how an attempt to go to her advocates office can be said to be a proper explanation or that it was frustrated by the advocate. It is noteworthy that the Plaintiff/Applicant doesn't claim that she does not know the physical location of her advocate office and that she went there and failed to find the advocate.
8. Based on the Plaintiff/Applicant's justification for bringing

the application namely, orderliness of proceedings and the desire to facilitate execution of the decree issued in favour of the Plaintiff/Applicant, I have looked at the application that was dismissed and the decree it purportedly seeks to facilitate its enforcement. I note that the decree does not require signing of any documents by the defendants/respondents and/or an officer of this Court before the decree can be enforced or executed. The Plaintiff/Applicant has not demonstrated, in the current or the previous application, that she has been unable to execute the decree of the Court issued in her favour to warrant granting the orders sought. The Plaintiff/Applicant has not convinced this Court that she made any attempt to reach her previous counsel. She has also failed to indicate when and how she got to know about the dismissal of the application, which facts are crucial in determining whether the delay in bringing the application has been properly explained. The Plaintiff/Applicant cannot evade accountability by merely blaming her advocate on record or changing her advocates. She must demonstrate what she

did to ensure the instructions which gave her advocate were acted upon.

9. The upshot of the foregoing is that I find the application dated 22nd October, 2025 to be lacking in merits and I dismiss it with no orders as to costs, the same having been undefended.
10. Orders accordingly.

**Dated, signed and delivered virtually at Busia this 11th day
of February, 2026**

**L. N. WAITHAKA
JUDGE**

In the presence of;-

Mr Tarigo for the Applicant

N/A for the Respondent

Court Assistant; Ian