

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**ELC CASE NO 946 OF 2013(O.S)**

**MARY WANJIKU MWANIKI .....**

**PLAINTIFF/APPLICANT**

**VERSUS**

**TRUSTEES PENTECOSTAL**

**ASSEMBLIES OF GOD .....**

**DEFENDANT/RESPONDENT**

**RULING**

1. Vide a Notice of Motion dated 28<sup>th</sup> March, 2025, brought pursuant to the provisions of **Article 159** of the **Constitution, Sections 1A 1B & 3A of the Civil Procedure Act** and **Order 17 Rule 2 (2) of the Civil Procedure Rules**, the Plaintiff/Applicant seeks the following reliefs:

*i. That this Honourable Court be pleased to set aside its order of 19<sup>th</sup> March, 2019 dismissing the applicant's originating summons dated 1<sup>st</sup> August, 2013 and reinstate the same for hearing on the merits.*

*ii. That the costs of this application be provided for.*

2. The Motion is set out on the grounds on the face thereof and supported by the affidavit of the Applicant of even date. She deponed that early this year, her advocate informed her that her originating summons dated 1<sup>st</sup>

August 2013 had been dismissed by this court for want of prosecution.

3. She explained that her failure to attend court on 19<sup>th</sup> March 2019 to show cause why the originating summons should not be dismissed was neither deliberate nor intended to obstruct the course of justice.
4. She deposed that at the material time, she was suffering from ill health and depression following two consecutive losses in her pursuit of political office and that during the same period, she experienced a traumatic incident in which she was allegedly robbed of Kshs 800,000 in a failed motor vehicle purchase transaction, an event that aggravated her already fragile health condition.
5. The Applicant stated that she had since been undergoing treatment and therapy and was gradually regaining her physical, emotional and psychological well-being and that upon improvement of her health, she was able to engage an advocate who, after making inquiries at the court registry in late January, learnt that the suit had been dismissed for want of prosecution on 19<sup>th</sup> March 2019.
6. It was her deposition that she has established a school on the suit land which, despite challenges arising from her health struggles, remains a going concern with a few students still enrolled. She expressed her renewed determination, in light of her improving health, to continue developing the institution and to prosecute the suit on its merits should the court grant the prayers sought.

7. She urged the court to exercise its discretion in her favour, emphasizing her willingness to comply with any conditions imposed to facilitate the expeditious disposal of the matter.
8. The Applicant maintained that no prejudice will be suffered by the Respondent that cannot be compensated by costs, noting that she has remained on the suit property since purchasing it in 1998. She therefore urged that it is fair and just that the application be allowed.
9. In response to the Motion, the Defendant/Respondent, through Mercy Waithaka, a Pastor of P.A.G. Church, Thika, swore a Replying Affidavit dated 16<sup>th</sup> July, 2025.
10. She deponed that the Applicant was accorded sufficient time and opportunity to prosecute her case and when it became apparent that she was not keen on prosecuting the matter, she was duly served with a Notice to Show Cause and her summons subsequently dismissed.
11. According to the deponent, the Applicant's excuse that she was indisposed does not hold water because she had counsel who could attend court on her behalf. Further, the medical document relied upon by the Applicant is dated 25<sup>th</sup> March 2025, approximately six years after the suit was dismissed, and therefore cannot justify her failure to attend court at the material time.
12. On the other hand, it was deposed, the exhibit dated 15<sup>th</sup> February, 2012 predates the institution of the suit by approximately one year and is similarly irrelevant to the issue before the court.

- 13.** According to Ms. Waithaka, the explanations advanced by the Applicant are not genuine, are misleading, and amount to an abuse of the court process. She further averred that the Respondent stands to suffer prejudice if the Motion is allowed, as it would deprive her of the fruits of a lawful court decision reached over six years ago.
- 14.** She concluded by stating that it is in the best interests of justice, and on a balance of convenience, that the application be dismissed with costs to the Defendant.
- 15.** The Applicant, through Counsel, filed written submissions dated 3<sup>rd</sup> November 2025. Counsel submitted that the Applicant's failure to attend court was not deliberate but arose from her ill health, which necessitated continuous treatment and therapy. Upon improvement of her condition, she engaged an advocate who, after perusing the court file, informed her that the matter had been dismissed in 2019.
- 16.** It was further submitted that the Applicant has established a school on the suit land which remains a going concern and that despite earlier challenges occasioned by her health, she is now determined to pursue her vision for the institution and prosecute the suit to conclusion.
- 17.** In urging the court to exercise its discretion, Counsel relied on the Plaintiff's supporting affidavit sworn on 28<sup>th</sup> March 2025, wherein medical evidence was annexed to demonstrate treatment for neurological issues.

- 18.** Counsel also pointed to evidence of a traumatic incident involving the loss of Kshs 800,000 in a failed motor vehicle transaction, which was said to have worsened the Applicant's already fragile health, and for which witness statements were annexed. It was submitted that these factors constitute a reasonable and credible explanation both for the failure to attend court on the material date and for the delay in bringing the present application.
- 19.** Addressing the Respondent's opposition, Counsel argued that although prejudice had been alleged, none had been demonstrated to the satisfaction of the court. On the contrary, it was submitted, the Applicant stands to suffer substantial prejudice if reinstatement is denied, given that she purchased the suit property, developed an educational institution thereon, and remained in occupation, matters which were said not to have been controverted in the replying affidavit.
- 20.** Counsel maintained that the overarching duty of the court, under the current constitutional dispensation is to do substantive justice and afford parties an opportunity to be heard on the merits rather than shut them out on procedural grounds. Reliance was placed on **Wachira Karani v Bildad Wachira (Nyeri HCCC No. 101 of 2011)** and **John Nahashon Mwangi vs Kenya Finance Bank Limited (Nairobi HCCC No. 212 of 2009)**.
- 21.** Counsel concluded by reiterating that the Applicant is ready and willing to abide by any conditions the court

might impose to facilitate the expeditious disposal of the suit, and respectfully urged the court to allow the application as prayed. No submissions were filed by the Respondent as at 17<sup>th</sup> February, 2026.

### **Analysis and Determination**

22. Having considered the Motion, responses and submissions, the sole issue for determination is whether the court should reinstate the suit? The Civil Procedure Rules outline two primary statutory frameworks governing dismissal of suits. **Orders 12** and **Order 17**. **Order 12** addresses the consequences of non-attendance at the hearing stage. On the other hand, **Order 17** deals with prosecution of suits. Of relevance herein is **Order 17, Rule 2** which states:

***“(1)In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.***

***(2).....***

***(3)Any party to the suit may apply for its dismissal as provided in sub-rule 1.***

***(4)The court may dismiss the suit for non-compliance with any direction given under this Order.***

***(5)A suit stands dismissed after two years where no step has been undertaken.....”***

**23.** Turning to the present matter, the record shows that a notice to show cause why the suit should not be dismissed for want of prosecution was issued on 27<sup>th</sup> August 2018, and the suit was subsequently dismissed on 19<sup>th</sup> March, 2019 for want of prosecution. The dismissal thus falls squarely within the province of **Order 17**.

**24.** The constitutional underpinning for expeditious disposal of cases lies in **Article 159** of the **Constitution**, which obliges courts to ensure timely justice. Equally, litigants and advocates bear a duty to progress matters without unreasonable delay.

**25.** Statutorily, **Sections 1A and 1B of the Civil Procedure Act** enshrine the overriding objective of facilitating just, efficient and proportionate resolution of disputes, while **Section 3A** preserves the court's inherent power. It provides thus:

***“Nothing in this Act shall limit... the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

**26.** Additionally, **Order 17 Rule 2(6)** of the **Civil Procedure Rules** allows a party to approach the court after a dismissal for want of prosecution. It provides as follows:

***“A party may apply to court after dismissal of a suit under this Order.”***

27. The jurisdiction of the court in this regard is discretionary, and must be exercised judiciously and in accordance with established legal principles. As was emphasized by the Court of Appeal in **Patriotic Guards Limited vs James Kipchirchir Sambu [2018] eKLR:**

***“...It is settled law that whenever a court is called upon to exercise its discretion, it must do so judiciously and not on caprice, whim, likes or dislikes. Judicious because the discretion to be exercised is judicial power derived from the law and as opposed to a judge’s private affection or will. Being so, it must be exercised upon certain legal principles and according to the circumstances of each case and the paramount need by court to do real and substantial justice to the parties in a suit.”***

28. The court in **Wachira Karani vs Bildad Wachira [2016] eKLR** appreciated that the threshold to be met by an Applicant seeking to have the court set aside its orders as aforesaid is the demonstration of sufficient cause. As to what constitutes sufficient cause, the Court of Appeal in the case of **BML vs WM [2020] eKLR**, explained:

***“What amounts to sufficient cause depends on the circumstances of each case and the court is called upon to exercise its discretion depending on the said circumstances. Musinga, JA in the case of The Hon. Attorney General v the Law Society of Kenya & Another, Civil***

**Appeal (Application) No. 133 of 2011 (ur) defined sufficient cause to be:**

**“Sufficient cause” or “good cause” in law means: ....the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused”. See BLACK’S LAW DICTIONARY, 9th Edition, page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”**

**Similarly, the Supreme Court of India in the case of Parimal v Veena [2011] 3 SCC 545 observed that:**

**"Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means**

***that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously."***

- 29.** By way of background, the Applicant commenced the suit through an Originating Summons dated 1<sup>st</sup> August 2013, seeking inter-alia, a declaration of entitlement to ½ of Thika/Municipality Block II/862 by adverse possession, and in the alternative, specific performance of the sale agreement dated 10<sup>th</sup> January 1998.
- 30.** The Applicant's case was that she purchased the suit property, paid the consideration, was granted possession, and constructed a school thereon. Despite this, no formal transfer of the parcel was ever undertaken in her favour.
- 31.** Considering the proceedings, the matter first came before court on 2<sup>nd</sup> August 2013 and thereafter on 6<sup>th</sup> August, 2018 after which the matter was fixed for hearing on 4<sup>th</sup> November, 2013. There was no appearance by the Applicant or her Counsel. On 14<sup>th</sup> July, 2014, the court granted leave to the Applicant's then Counsel to cease acting.

- 32.** The matter came up for mention on 12<sup>th</sup> March, 2018 and 27<sup>th</sup> August, 2018 on which dates there was no appearance. On this date, 27<sup>th</sup> August, 2018, the court directed that a notice to show cause issues. The notice to show cause why the suit should not be dismissed for want of prosecution was duly issued and, on 19<sup>th</sup> March, 2019, the suit was dismissed for want of prosecution.
- 33.** The Applicant explains her absence on 19<sup>th</sup> March, 2019, as arising from ill health and depression following political losses, coupled with a traumatic incident in which she lost Kshs 800,000. She avers that she has since regained stability and engaged counsel upon learning of the dismissal of the suit.
- 34.** The Respondent, however, contends that the delay is inordinate and that reinstatement of the suit will be prejudicial.
- 35.** In support of her explanation, the Applicant produced a medical report from Seventh Avenue Medical Hospital dated 26<sup>th</sup> March, 2025. The medical report indicates that the Applicant was admitted in April 2014 and subsequently discharged on 21<sup>st</sup> April, 2014.
- 36.** She was thereafter placed on outpatient review and periodic treatment up to around 2016, with advice to resume light duties and normal activities progressively. She was re-admitted on 16<sup>th</sup> August, 2016 and discharged on 30<sup>th</sup> August, 2016.

- 37.** The medical report further states that upon discharge, the patient was placed in a serial clinic under a neurologist for three years and was advised to resume light duties/activities and exercise in her mobilities and coordination and advised to see the physiotherapist and mind on speech therapy pathologist. It notes that the patient is still on medical treatment as she recovers.
- 38.** While this evidence indeed shows that the Applicant underwent significant medical challenges and required ongoing review and rehabilitative care, it does not, of itself, establish that she was wholly incapacitated or unable to take procedural steps in the matter for the entire duration preceding the dismissal.
- 39.** The medical report reflects periods of treatment, recovery and advice to progressively resume light duties and normal activities, thereby suggesting intervals within which reasonable steps towards prosecution of the suit could have been undertaken, either by herself or through her advocates on record. Even if the court were to consider the time from 2019, this Motion has still been brought more than 5 years thereafter.
- 40.** Likewise, the police abstract relating to the robbery predates the dismissal and indeed the institution of the suit and does not, on its own, provide a cogent explanation for the sustained inactivity that followed. The court is therefore left with substantial gaps in the chronology of

events, which, as observed in **BML vs WM [2020] eKLR**, undermines the demonstration of sufficient cause.

**41.** In the circumstances, the delay herein must be regarded as both prolonged and inexcusable. The discretion to reinstate, as underscored in **Patriotic Guards Limited vs James Kipchirchir Sambu [2018] eKLR** and **Wachira Karani vs Bildad Wachira [2016] eKLR**, must be exercised judiciously and not on sympathy alone.

**42.** The explanation tendered does not meet the threshold of rational, plausible and convincing cause. In the circumstances, and bearing in mind the prejudice occasioned by stale litigation, the court finds that the delay is unreasonable and inadequately explained, and that reinstatement of the suit would undermine the principles of finality and expeditious disposal of disputes.

**43.** In the end, the court finds the Motion dated 28<sup>th</sup> March, 2025 to be unmerited. The same is dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 5<sup>th</sup> day of March, 2026.**

**O. A. Angote**  
**Judge**

**In the presence of:**

No appearance for the Plaintiff

No appearance for the Defendant

Court Assistant: Tracy

ORIGINAL