

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. 18 OF 2017

JAMES KARIUKI KAMAU1ST
PLAINTIFF

BENARD KAIRO KAMAU.....2ND
PLAINTIFF

-VERSUS-

JOHN KIPKETER RUTO.....1ST
DEFENDANT

ROBERT MBUGUA NDURANU.....2ND
DEFENDANT

NJOROGE NDURANU.....3RD
DEFENDANT

JOHANA MWANGI.....4TH
DEFENDANT

RULING:

1. The application for consideration is the Notice of Motion dated 9th October, 2025 by the Plaintiffs/Applicants seeking to vary or set aside the courts orders made on 30th September, 2025 dismissing the plaintiffs' suit for non-attendance and/or for want of prosecution and have the suit reinstated for hearing and determination on merit.

2. The application is supported by the affidavit of Stanley N. Kagunza Advocates sworn on even date and is premised on the grounds that the failure to attend court for further hearing on 30th September, 2025 was due to a technical hitch the said advocate experienced when his call kept dropping due to power outage in his office which prevented him from attending the matter virtually immediately it was called out. That at 9.15a.m. his colleague, Mr. Ngigi Mbugua Advocate texted him and informed him that the matter had been placed aside and when he logged in, he waited patiently on the online platform for the matter to be recalled. That although the same was not called out, he was prompted to send his clients and his associate, Mr. Justin Lubanga advocate, to rush to court and upon reaching the court, he was informed that the matter had already been called out in open court and dismissed for non-attendance and for want of prosecution.
3. Mr. Kagunza deponed that failure to attend court on the said date was not intentional, adding that the plaintiffs, who were present in his office on that date are innocent parties who are keen and desirous of prosecuting their case and had travelled all the way from Molo to attend the hearing. Learned counsel argued that it was not the plaintiffs fault, but the technical predicament that he encountered on the said date. He thus urged the court to allow the application and reinstate the plaintiffs' suit for hearing on merit.

4. The application was opposed by the 3rd Defendant through grounds of opposition dated 11th October, 2025. It is the 3rd Defendant's contention that the application is misconceived, frivolous, vexatious and an abuse of the due process. That the application is couched as if it is owned by counsel, yet the suit was dismissed because neither the plaintiffs nor their advocate were in court on the date of hearing. That the fact that the suit had been in court since 2017 is sufficient prejudice to the defendants. The 3rd Defendant contended that the reasons advanced in the application and supporting affidavit do not constitute sufficient reason to vary or vacate the orders made on 30.9.2025.
5. The application was not opposed by the 1st, 2nd and 4th Defendant's.
6. Pursuant to directions given by the court, the application was canvassed by way of written submissions. The plaintiffs filed their submissions dated 4th December, 2025. I have perused the court record, including the CTS platform and I have not seen any submissions filed by the defendants.
7. I have considered the application as presented and the grounds of opposition by the 3rd Defendant as well as the submissions filed together with the authorities relied on. The only issue for determination is whether the orders dismissing

the plaintiffs suit on 30.9.2025 should be set aside and the suit reinstated for hearing on merit.

8. The constitutional underpinning on conclusion of matters in a timely manner is contained in Article 159 (2) (b) of the Constitution which provides that justice shall not be delayed. It is the duty of the court, litigants as well as advocates to ensure that matters are concluded expeditiously, without inexcusable delay. Sections 1A, and 1B of the Civil Procedure Act also provide for timely disposal of proceedings while section 3 A of the said Act gives the court wide discretion over matters and issues that are before it, including the question as to whether or not to reinstate a suit dismissed on account of non-attendance. And whereas Order 12 Rule 3(1) of the Civil Procedure Rules gives the court power to dismiss a suit, Order 12 Rule 7 allows an aggrieved party to set aside the Order of dismissal and reinstate the suit upon such terms as may be just. That is what the plaintiffs have now done.
9. Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised in a just manner as was held in **Bilha Ngonyo Isaac Vs Kembu Farm Ltd & Another (2018) eKLR** which echoed the decision in **Shah V Mbogo & Another (1967) EA 116**.

10. In the present application, the reason given by the plaintiffs is a technical hitch that was allegedly experienced by their advocate due to a power failure which made his virtual appearance drop. In my view, the explanation given is satisfactory. I will therefore exercise my discretion and set aside the orders made on 30.9.2025 dismissing the plaintiffs' suit and reinstate the suit for hearing on its merits. In my view, no prejudice will be occasioned to the defendants as they can be compensated by way of costs. It is fair and just to allow the application so as to give the parties a chance to have the matter heard and determined on merit.
11. Consequently, the Notice of motion dated 9.10.2025 is allowed as prayed. Costs shall be in the cause.
12. Orders accordingly.

DATED, SIGNED and **DELIVERED** virtually at **ELDORET** on this **12TH** day of **MARCH, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mr. Lubanga holding brief for Mr. Kagunza for Plaintiffs.

Mr. Mogamabi for 1st Defendant.

No appearance for Mr. Nyerere for 2nd & 4th Defendant.

No appearance for Mr. Ngigi for 3rd Defendant.

Court Assistant - Laban.

ORIGINAL