

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ELCA CASE NO. OS. E029 OF 2022

JOHN ODHIAMBO GUMBA

**(Suing as the legal administrator of all the estate of
ALOYCE GUMBA**

**OLOO.....DECEAS
ED**

VERSUS

**JOHN ODUOR NENGA alias ODUOR
NENGA.....DEFENDANT**

**LAND REGISTRAR UGENYA SUBCOUNTY.....
RESPONDENT**

AND

**JOSEPH GUMBA OTHIENO.....INTENDED
INTERESTED PARTY**

RULING

1. The application the subject of this ruling is dated 27/10//2025. The application seeks the reinstatement of the application dated 25/03/2025 brought by the Interested Party.
2. The application is supported by the affidavit of Joseph Gumba Othieno sworn on 27/10/2025. It is deponed that

the his matter was dismissed for want of prosecution for failure of his advocate attending court yet the applicant has been attending court on the material days. That dismissing this matter will lead to more criminal cases between the plaintiff and the defendants.

Respondent Reply

3. The application is opposed by the plaintiff through the replying affidavit sworn on 11/11/2025.
4. The deponent states that he instituted this suit as a legal representative of the estate of ALOYCE GUMBA dcd and that the proceedings to obtain the AD-LITEM to such estate remains un challenged at the UKWALA PMC SUCC CAUSE NO.64 OF 2022.
5. That he moved this honorable court accordingly and obtained judgement on 4th April 2024. He met several resistance in executing the judgement due to frustration from both the Defendant and the intended interested party forcing him to return to court for further orders of which he obtained on 21st November 2024.
6. That after the defendant and the intended interested party noted that the village tactics were not holding water, they now embarked in filing non moving applications in court to enable them delay justice to the plaintiff/applicant instead.
7. That the application dated 25th March 2025 has very slim or no chances of success at all on grounds that the defendant in the suit JOHN ODUOR NENGA died in early

2025 before the application dated 25th March 2025 brought by him could be heard.

8. That the intended interested party is a beneficiary of the judgement delivered by this honorable court on grounds that the suit land was ordered to be registered in the names of his grand father ALOYCE GUMBA deceased who is father to the plaintiff/respondent hence no need to fight at this level before the succession to the estate of ALOYCE GUMBA deceased reaches distribution stage.
9. That the application dated 25th March 2025 if reinstated, will only award the intended interested party a fresh opportunity to delay the process and to realize his goal and only one goal: To delay execution of the judgement delivered on 4th April 2024 even for ever. That the intended interested party intentionally filed the application and decided to have it unprosecuted to but time.
10. In rejoinder the intended interested party states that the plaintiff did not consult other beneficiaries when he filed the suit and who were not heard including the deponent. That this was to enable the plaintiff be allocate the entire parcel. That the defendant was not aware of the judgement until when the plaintiff was to execute it. That the defendant being deceased does not mean that justice should not be practiced for the remaining beneficiaries. It is stated that this court has the powers to set aside the judgement due to procedural irregularities on the judgement.

SUBMISSIONS

11. The application was canvassed by way of written submissions. The respondents submissions are dated 5/12/2025. The applicant filed his submissions on 10/02/2026 with leave of the court/

ANALYSIS AND DETERMINATION

12. I have read the affidavits sworn in support of the application and in reply thereto. I have also given due consideration to the submissions on record.

13. It is true this court dismissed the application dated 23/3/2025 for want of prosecution with no orders as to costs on 27/10/2025. Counsel for the applicant was not present in court 27/10/2025. The court had noted that Counsel for the applicant was not present and had also been granted time to substitute.

14. The record bears that the applicant after the orders had issued addressed the court indicating that he had applied to represent himself but he had not filed the requisite notice. The court then noted that the applicant was an intended interested party and is not yet admitted in the matter. Further noted it was a post judgement matter and reiterated its orders of dismissal and advised the applicant to apply formally to the court.

15. The application before me is an application for reinstalment of the substantive application dated 25/3/2025. I must quickly observe that this not a ruling for the application dated 25/3/2025. However, I note that both parties have gone ahead and made submissions on the

application dated 25/3/2025. May be the court should have directed as a case management strategy that both applications were to be heard concurrently. But what's done is done.

16. The substantive provisions applicable given the nature of the orders sought is Order 12 Rule 7 of the Civil Procedure Rules. There is no specific rule for dismissal of applications but the principles in my view apply since an order for dismissal has been made.
17. In the case of **John Nahashon Mwangi vs. Kenya Finance Bank Ltd (in liquidation) [2015] KEHC 6789(KLR)** the court stipulated the principles to be considered in exercising the discretion on whether or not to reinstate a case as follows:

“The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of the Constitution. Article 50 coupled with article 159 of the Constitution on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such matter of reinstatement of a suit which has been dismissed by the court. These principles were enunciated in a masterly fashion by courts in a legion of decisions which I need not multiply except to state that; courts should

sparingly dismiss suits for want of prosecution for dismissal is a draconian act which drives away the plaintiff in an arbitrary manner from the seat of judgment. Such act are comparable only to the proverbial "Sword of the Damocles" which should only draw blood where it is absolutely necessary. The same test will apply in an application to reinstate a suit, and a court of law should consider whether there are reasonable grounds to reinstate such a suit, of course, after considering the prejudice that the defendant would suffer if the suit was reinstated against the prejudice the Plaintiff will suffer if the suit is not reinstated."

18. The power donated to the court to set aside its orders is therefore discretionary. The main reason expressed by the applicant is that his advocate on record did not attend court. Indeed, this is a true reflection of the record.
19. The respondent/plaintiff has raised a number of issues in opposition to the application that it is a delay tactic by the applicant and that the application dated 25/03/2025 stands no chances. However, a number of preliminary issues have been raised by the respondent/ plaintiff which the court has noted a very pertinent. However, I think the right forum would be to address them within the application dated 25/03/2025 which seeks to set aside the judgement of the court.

20. Back to the present application. The question as to whether counsel's mistake should be visited upon a client has been a subject of many judicial pronouncements where the courts have been unanimous that where the mistake is excusable then it should and the court must at all times lean on upholding justice. See **Belinda Murai & Others Vs Amos Wainaina (1978) KLR 278; Phillip Chemwolo & another Vs Augustine Kubebe (1982-88) KAR**

21. The applicant also states he has been attending court. As noted earlier in this ruling the applicant was present in court.

22. For the foregoing reasons I would be inclined to reinstate the application dated 25/03/2025.

23. The following orders therefore issue to dispose of the application dated 27/10/2025

24. The application dated 27th October 2025 be and is hereby allowed with costs to the respondent.

25. The following further orders issue. I have already noted that both parties have made substantive submissions on the application dated 25/03/2025 and noting that responses thereto had been filed. I will proceed to reserve a date for a ruling on the application dated 25/03/2025.

Orders accordingly

Delivered and Dated at Siaya This 18th Day of March 2026

HON. LADY JUSTICE A.E. DENA

JUDGE

18/03/2026

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

No appearance for the Plaintiff

No appearance for Defendant (deceased)

Joseph Gumba Othieno Intended Interested Party

Court Assistant: Ishmael Orwa