

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC 46 OF 2016

JULIUS CHARO RAYMOND & ANOR
PLAINTIFF

VERSUS

THE HON ATTORNEY GENERAL & OTHERS
DEFENDANTS

RULING

1. The application dated 15th December 2025 is seeking the setting aside of the orders of 10th December 2025 dismissing the suit for want of prosecution and reinstatement for hearing and determination on the merits. It is supported by the affidavit of Mburu Kariuki, advocate of even date. The grounds upon which the application is made are that his firm has been in conduct of the matter through one Ms Nduku; that on 9th December 2025, the Attorney General dispatched correspondence by electronic Mail indicating that counsel having conduct of the matter was unavailable and requested indulgence. Most of the witnesses were to travel from Lamu; that since the counsel having conduct of the matter was unwell that morning, Mr. Kariuki took over the matter, only to learn that same had been dismissed for want of prosecution; that when he logged into court, the judge advised him to get in touch with Mr. Otara for the 4th defendant, but by the time he got him, the court had already risen for the day hence the formal application.

2. Only the 4th defendant opposed the application through grounds of opposition dated 6th February 2026 set out as follows:

- a. The application is vexatious frivolous and misconceived;*
- b. That no reasonable grounds or reasons have been given by the plaintiffs/applicants to warrant setting aside of the orders made on 10th December 2025;*
- c. That there is no arguable suit before Court as the suit is statutorily time barred by the fact that the same is challenging a process done on the 9th February 1995;*
- d. There is no arguable suit before Court for reinstatement as the suit doesn't meet the threshold of Section 79 and 80 of the Land Registration Acts 2012.*

3. The application was disposed of by way of written submissions

4. The plaintiff filed submissions dated 4th February 2026. The 4th defendant filed submissions dated 6/2/2026. I have considered those submissions in the preparation of this ruling.

5. It is noteworthy that the application was filed on the same day that the matter was dismissed. The application was therefore timeously lodged.

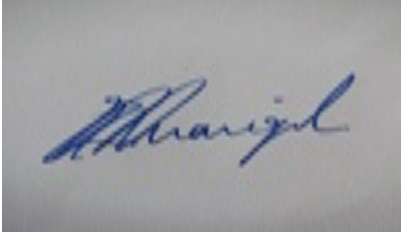
6. It is trite that the discretion of the court to set aside its orders are unfettered but that the discretion must be exercised judiciously and not capriciously. It is the promptitude of the application and the supporting evidence provided by the applicant which determines the course that the court will adopt in handling a setting aside application.

7. Affidavit evidence in this case is that after receiving the communication dated 9th December 2025 from the Attorney General, a crucial party in the suit, the parties became pessimistic about the matter proceeding on 10/12/2025, and since the witnesses for the plaintiff were coming from afar, they were told not to travel in order to avoid incurring unnecessary

expense. That is reasonable, but it must also be observed that the court has mechanisms for ensuring parties who occasion adjournments pay costs they have caused the others to unnecessarily incur and that excuse should be used only in very limited instances. In this case, all that counsel required was to attend court and inform it of such pessimism, however weak, and leave it to decide. However, the second piece of evidence is that counsel dealing with the matter was unwell on the material day and Mr. Mburu stepped in to cover her, only to discover that the matter had already been dismissed.

8. I have considered the grounds raised by 4th respondent. Grounds number 1 and 2 have been explained by the applicant. Grounds number 3 and 4 go to the substance of the case and cannot be tried at an interlocutory stage. That leaves the court only with the option of granting the application.
9. I therefore find that the application dated 15th December 2025 has merit and the same is allowed in terms of **prayer number 2** thereof. The costs of the application shall be in the course. The suit shall be mentioned on **26th May 2026** for the fixing of a fresh hearing date convenient to all parties.

Dated, signed and delivered at Malindi on this 17th Day of March, 2026.

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**