



Malvi Investments Limited v National Environment Management Authority (Environment and Land Case 450 of 2018) [2026] KEELC 1799 (KLR) (24 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 450 OF 2018**

JG KEMEI, J

MARCH 24, 2026

BETWEEN

MALVI INVESTMENTS LIMITED PLAINTIFF

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY DEFENDANT

(In respect of the Plaintiff's Application dated 7/5/2025)

RULING

1. Before the court is the Plaintiff's Notice of Motion dated 7/5/2025. The application is expressed to be brought under Article 159 (2) (a), (b) & (d) of *the Constitution*, Section 1 (A), 3A & 63 (e) of the *Civil Procedure Act* and Order 12 Rule 6 & 7 as well as Order 51 rule 1 of the Civil Procedure Rules 2010. The Plaintiff/Applicant prays for the following orders;
 - a. That the Honourable Court do set aside the Orders of dismissal made on 5/5/2025 dismissing the matter for want of prosecution.
 - b. That the Honourable Court do reinstate the matter dismissed on 5/5/2025 to be heard on its merits in the interest of justice.
 - c. That costs of this application be in the cause.
2. The application is based on the grounds stated on the face of it and further supported by the affidavit of Alphonse Muema Mbindyo, Counsel for the Applicant, who deponed on 7/5/2025. The deponent states that this court issued orders on 11/2/2025 directing a site visit in accordance with the orders issued on 12/6/2023, to be conducted in the presence of Counsel for both parties. The Water Resource Authority was to carry out the exercise and file its report accordingly. Counsel averred that the said orders were only uploaded to the Court Tracking System [CTS] on 4/4/2025 and served upon the Water Resource Authority on 7/4/2025. He further states that he only managed to serve the Regional



Commander of Police on 25/4/2025 after his service at various police stations had been declined for want of jurisdiction.

3. Counsel avers that when the matter came up for call over on 5/5/2025, when he was addressing the court in ELC Makueni Case No. 333 of 1999. He avers that he requested Counsel for the Respondent to inform the court of his predicament, who informed him that the matter had been slated for hearing at 11.15 a.m.
4. Counsel avers that he logged into the virtual court at 11. 00 a.m. ready to address the court, but stayed till 1.00 p.m. awaiting admission to no avail. He asserts that he only learnt from the Court's Tracking System that the matter had been dismissed for want of prosecution. He avers that the matter was likely called out in open court in the absence of both Counsel.
5. The deponent avers that his failure to attend court was not intentional as he believed that the matter would proceed virtually, allowing him to seek the court's indulgence. He affirms that the Applicant is eager to pursue the matter to its logical conclusion; hence, the application has been filed timeously. He prays that the suit be reinstated, as the Applicant stands to suffer significant loss and damage. He argues that his Counsel's mistake should not be attributed to his client.

Written submissions

6. The Court directed that the application be served upon the Defendant/Respondent thereafter it be canvassed by way of written submissions. Despite the service of the application, the Defendant/ Respondent did not file any document in response thereto. The application is therefore unopposed.

Analysis and Determination

7. I have considered the application and the issues that commend themselves to me for determination, are:
 - a. Whether the court should reinstate the suit as prayed.
 - b. Who should bear the cost of the application?

Whether the court should reinstate the suit as prayed

8. The law applicable for setting aside judgment or dismissal is Order 12 Rule 7 of the Civil Procedure Rules which provide as follows;

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”

9. Reinstatement of a suit is discretionary. Section 3A of the *Civil Procedure Act* gives the court inherent power to make such orders as may be necessary to achieve the ends of justice. What the court is to consider while exercising discretion was emphasized in the case of Esther Wamaitha Njihia & 2 Others -vs- Safaricom Ltd [2014] eKLR where the court citing relevant cases on the issue held inter alia:-

“The discretion is free and the main concern of the courts is to do justice to the parties before it (see Patel vs E.A. Cargo Handling Services Ltd.) the discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice (see Shah vs. Mbogo). The nature of the action should be considered, the defence if any should also be considered; and so should the question as to whether the Plaintiff can reasonably be compensated by costs for any delay



bearing in mind that to deny a litigant a hearing should be the last resort of a court.... It also goes without saying that the reason for failure to attend should be considered.”

10. This Court is guided by the holding in the above case regarding how to apply its discretion. It should exercise it judiciously and to avoid injustice and hardship that may result from an excusable error.
11. In the instant case, I have reviewed the proceedings in this file and note that the applicant has been diligent in prosecuting its suit. Relying on the principle established in the case of Shah vs Mogo (1979) EA 116 cited above, I am persuaded that the reason given by the Plaintiff's Counsel for his failure to attend Court on 5/5/2025 is excusable.
12. I also note that the Plaintiff filed the instant application without any undue delay. The application having been filed just two (2) days after the dismissal of the suit. In light of the foregoing reasons, I find that this is a case that warrants the exercise of the court's discretion in favour of the Plaintiff. More so, since the court is mandated to serve substantive justice in view of the Constitutional provisions of Article 159 (2) (d).
13. Final orders for disposal
 - a. Therefore, and in the interests of justice, I am inclined to allow the application dated 7/5/2025.
 - b. Consequently, the order of 5/5/2025, dismissing the Plaintiff's suit in its entirety for non-attendance is hereby set aside.
 - c. This suit is hereby reinstated on condition that the Plaintiff sets the matter down for hearing within 30 days from the date hereof; in default, it shall stand dismissed.
15. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Mr Mbindyo for the Plaintiff /Applicant

N/A for the Respondent

CA- Ms. Merylynn Nyanchama

