



**Khwatenge v Alusa (Environment and Land Appeal E015 of 2024)
[2026] KEELC 1981 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1981 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E015 OF 2024**

**AK BOR, J
MARCH 19, 2026**

BETWEEN

PHILIP KHWATENGE APPELLANT

AND

FLORA NASWA ALUSA RESPONDENT

RULING

1. The Appellant filed the application dated 17/12/2025 seeking to have this court set aside the order made on 17/12/2025 vide which the Appellant's application dated 20/11/2025 was dismissed. He sought reinstatement of that application for hearing and determination on merit. The application was made on the ground that on 17/12/2025, the Appellant's counsel experienced persistent network connectivity challenges and was intermittently disconnected from the virtual session. Further, that her attempts to rejoin the session and pleas to the court registry were not unsuccessful.
2. Imali Gwehona swore the affidavit in support of the application. She deponed that she lost connectivity to the virtual session at approximately 10.25 a.m. and made every effort to rejoin the session but she was unable to do so. When she called the court assistant, he informed her that the application had been dismissed for non-attendance. Furthermore, he informed her that the Judge tried to call out her name but she was not responding which she argued was proof that she was present in court on the material day.
3. The Respondent opposed the application through the grounds of opposition dated 22/1/2026. The grounds are that the application did not meet the ingredients for setting aside a dismissal order and that the appeal was withdrawn and as such, there is no appeal to be reinstated.
4. The court directed parties to file an exchange written submissions which it has considered. The Respondent submitted that the Appellant's counsel did not call the Respondent's counsel to inform him of any hitch counsel that was experiencing. She maintained that the Appellant had not come



to court with clean hands. The Appellant submitted that he had provided a full, satisfactory and unchallenged explanation for the default. Further, that the satisfactory explanation for the default should unlock this court's discretion.

5. The issue for determination is whether the court should set aside the orders made on 17/12/2025 vide which it dismissed the Appellant's application dated 20/11/2025. The court notes that the application was made on the same day and the grounds for failure to attend court by the Appellant's advocate is that she encountered technological hitches while attending the virtual court session. and could not address the court.
6. The court is inclined to believe the Appellant's explanation for his counsel's failure to attend court on 17/12/2025. The court grants prayers 2 and 3 of the application dated 17/12/2025. The Respondent is awarded the costs of the application.

DELIVERED VIRTUALLY AT BUNGOMA THIS 19TH DAY OF MARCH 2026.

K. BOR

JUDGE

Court Assistants – Bett/Metrine

No appearance for both parties

