

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE

ELC NO. 170 OF 2017

GEOFFREY LUTILO YABUNA-----
PLAINTIFF/APPLICANT

VERSUS

ANTHONY MUNENE-----1ST
DEFENDANT/RESPONDENT

LAND REGISTRAR TRANS-NZOIA COUNTY-----2ND
DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL-----3RD
DEFENDANT/RESPONDENT

RULING

- 1.** By an application dated **15/4/2026**, the court is asked to set aside the orders dismissing the plaintiffs' suit and to reopen the case for hearing on the merits. The reasons are contained on the face of the application and in a supporting affidavit of Geoffrey Lutilo Yabuna, sworn on **15/4/2026**.
- 2.** The plaintiff deposes that he was initially represented by the Firm of Risper Arunga and later by the Firm of Biketi & Co. Advocates. The plaintiff deposes that the said firm was not in active practice, he did not communicate progress of his case, and embarked on looking for him, only to learn that he had secured employment as per

annexure **GLY-(1)** with the office of the Prime Cabinet Secretary.

- 3.** The plaintiff deposes that he had initially given evidence but was never cross-examined, produced exhibits, or called his witnesses as per the list of documents and witnesses attached as **GLY-(2)**.
- 4.** The plaintiff deposes that he came on a date not mentioned to the court registry, only to learn of the judgment date after the matter proceeded ex parte. The plaintiff deposes that the non-attendance was due to the alleged closure of the practice of his former advocates.
- 5.** The application is opposed through a replying affidavit of Anthony Munene, sworn on **27/4/2026**, terming the plaintiff as an indolent litigant totally disinterested in prosecuting his case since **2017**. It is deposed that it is unbelievable that the plaintiff casually dealt with his advocate, and did not attempt to find out for more than **8** months what was happening to his case. The 1st defendant terms the averments on paragraph **3** of the supporting affidavit not a reflection of an honest person, given that the notice of change of advocates was dated **19/8/2025**.
- 6.** The 1st defendant deposes that the said advocate not only failed to attend the hearing but also all the

mentions known to him before he was appointed in **March 2026**. The 1st defendant deposes that the plaintiff was aware of all the foregoing happenings, for he was duly served with court processes, and therefore he cannot claim prejudice on account of the advocate.

- 7.** Further, the 1st defendant deposes that the process of closing down a law firm is not a day's event but involves the appointment of an administrator, and the plaintiff had sufficient time to appoint another advocate. the 1st defendant deposes that the plaintiff and his advocate well knew of the matter but chose not to attend court for unknown reasons.
- 8.** The 1st defendant deposes that paragraph **7** of the supporting affidavit is another depiction of an indolent and disinterested litigant, who does not even know that his former advocate represented him in an application for an amendment of pleadings leading to the reopening of the case. The 1st defendant deposes that this lack of knowledge of the developments in the matter depicts at the hands of his former advocate depicts a litigant seriously indolent and lacking interest in the matter.
- 9.** The 1st defendant deposes that in view of the foregoing, there are no good reasons given for the

failure to attend court, to attract the discretion of this court.

- 10.** The application is also opposed on the grounds of the opposition dated **24/4/2026**. The 1st respondent also relied on written submissions dated **27/4/2026**, isolating three issues for determination.
- 11.** The issues flagged are whether the applicant has demonstrated sufficient cause to warrant reopening and setting aside the proceedings; whether he has been diligent in prosecuting his case; and, lastly, if the application offends the principle of finality in litigation.
- 12.** The 1st defendant submits that the framework given the issues is **Section 1A, 1B, and 3A** of the Civil Procedure Act, **Article 159** of the Constitution. However, in this case, it is submitted that there has been indolence and lack of diligence, which is demonstrated in the plaintiff's conduct. Reliance is placed in ***Ivita -vs- Kyumbu [1984] KLR 441***. The 1st defendant submits that no good cause has been shown to warrant setting aside or reopening of the case, in view of the record of the court showing non-attendance, even before the last hearing date or the alleged appointment in **2026**, which has not been sufficiently explained.

- 13.** The 1st defendant submits that there is no evidence of closure of the office of the former lawyer, and in any event, the plaintiff had sufficient time to prepare for the hearing. The 1st defendant submits that there is a lack of candour on the part of the plaintiff, who has not even disclosed the exact date(s) he learned of the appointment of his former lawyer by the government, which lack of transparency undermines the credibility of the application for failure to disclose material facts.
- 14.** The 1st defendant deposes that there should be finality to litigation, parties must be candid to the court, to re-open the matter will prejudice him, and the doctrine of expeditious disposal of case as the business of the court, and in this case, no sufficient cause has been shown.
- 15.** The court records indicates that interim orders were issued to the plaintiff on **30/9/2019**. Similarly, the record shows that PW1 testified and produced documents in the matter and was also cross-examined on **5/10/2023**, the only issue remaining being re-examination, as he was reportedly sick. Last adjournment was granted to the plaintiff.
- 16.** When the matter came up on **27/1/2025**, an application for amendment was allowed. Come again on **13/2/2025**, the plaintiff's advocate then

sought to have the matter start de novo, which the defendants conceded to the same parties were ordered to comply with **Order 11** of the Civil Procedure Rules, before the case conference on **20/3/2025**.

17. A hearing date was given for **30/9/2025**. Meantime, on **17/7/2025**, an application to amend the defence was filed whereby a ruling dated **17/9/2025** was allowed. Miss Arunga appeared for the plaintiff. When the matter came up on **30/9/2025**, the firm of Biketi & Co. Advocates was absent. The main hearing was adjourned and a mention given for **3/10/2025**. The plaintiff's advocate did not attend to confirm the filing of a response to the amended defence and counterclaim.

18. The court, nevertheless, extended the time to do so, before the mention dated for **11/12/2025**. On that date, the plaintiff did not show up. He had also not responded to the amended defence and counterclaim. So, the court gave a hearing date of **3/3/2026**, when the plaintiff did not show up. The court record shows that in all these mentions and hearing dates, affidavits of service were filed showing that the plaintiff's lawyers were duly notified of the happenings in the file.

- 19.** What the court is being asked is to reinstate the plaintiff's suit, which was dismissed for non-attendance and non-prosecution, and to also grant him an opportunity to defend the amended defence and counterclaim by the 1st defendant. The plaintiff blames his former lawyer for the same. His current lawyer came to the suit after its dismissal. I doubt if he has complied with **Order 9 Rule 9** of the Civil Procedure Rules to have the capacity to file a notice of change of advocates.
- 20.** In **Habo Agencies Ltd -vs- Wilfred Odhiambo Musingo [2020] KECA 486 PKLR**, the court held that it is not enough for a party in litigation to simply blame the advocate on record for all manner of transgressions in the conduct of the litigation. The court said that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel.
- 21.** Besides, showing interest in their matters, litigants are expected to adhere to procedural timelines set out in law, as the same help in the expeditious disposal of the said suits as held in **Salat -vs- IEBC & Others [2014] KESE 12 [KLR] Civil (4th July 2014) (Ruling)**.
- 22.** In **Rajesh Rughani -vs- Fifty Investments Ltd & Another [2005] eKLR**, the court said that it is not

enough to simply accuse the advocate of failure to inform him, as if there is no duty on the client to pursue his matter, and that if the advocate was simply at guilty of inaction, that is not an excusable mistake which the court may consider with some sympathy.

- 23. Order 12 Rule 17** of the Civil Procedure Rules provides for the reinstatement of a dismissed suit. In **John Nahashon Mwangi -vs- Kenya Finance Bank Ltd in (liquidation) 2015 eKLR**, and **Shah -vs- Mbogo & Another [1967] EA 116**, the court said that the exercise of the discretion is not intended to aid a person who deliberately seeks to obstruct justice but to avoid hardship resulting from an accident, or excusable mistake or error, but not where someone sought to deliberately whether by evasion or otherwise obstruct the cause of justice.
- 24.** In **Patriotic Guards Ltd -vs- James Kipchirchir Sambu [2018] eKLR**, the court said the exercise of discretion is judicially derived in law as opposed to the judge's private affection or will to do real substantial justice to the parties.
- 25.** The threshold to set aside orders by demonstration of sufficient cause, as held in **Wachira Karuni -vs- Bildad Wachira [2016] eKLR**. Sufficient cause

was defined in **BML -vs- WM [2020] eKLR**, as dependent on the circumstances of each case.

26. In **Attorney General -vs- Law Society of Kenya & Another Civil Appeal Appl. No. 133 of 2011**,

the court said the burden is on the applicant to sufficiently show good cause, which means rational, adequate enough, he did not act negligently, or there was a want of *bona fide* on his part, he cannot be said not to have acted diligently or remained inactive. See **Parimal -vs- Veena [2011] 3 SCC 545**.

27. Applying the foregoing case law to the instant suit, the chronology of events shows that the plaintiff is out of touch with the happenings in this matter. His affidavit, as submitted by the 1st defendant, depicts scant knowledge of his case and the developments since he was last in court. He does not even know that he produced exhibits and was actually cross-examined.

28. The plaintiff does not even know that there was an amendment of pleadings to which he was given a chance to respond to the counterclaim, but chose not to. He does not even know that his suit was reopened to give him a chance to answer to the counterclaim. All these show that the plaintiff

packed the case in court and left it to the fate of his lawyers, yet the suit belongs to him.

- 29.** The plaintiff, in the circumstances, had the burden to give plausible, logical, and credible reasons why the discretion of the court should be extended to him. Blaming the lawyer, without telling the court what he did on his part to follow up on both the lawyer and the court, and to expedite his case, is what is missing. Blaming advocates for all transgressions and courts even when none exist is no longer fashionable and cannot be tolerated in this era and age, when parties can also follow up their cases from the comfort of their rooms through mobile phone short message services.
- 30.** This is a classical case where the plaintiff is not even telling the court when he last visited the said law firm or made payments to it to fast-track the court processes. The court has not been told when the law firm was closed or what efforts were made, if any, to notify the litigant of the winding up of the law firm. The said law firm continued receiving court processes via its email on behalf of the plaintiff. It is the plaintiff who has the duty to disclose those material facts, dates, and communications of the winding up of the law firm.

31. The court finds no sufficient cause shown, more so when the amended defence and counterclaim attached no defence. The application is dismissed for lack of merit.

32. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **6th** day of **May 2026**.

In the presence of:

Court Assistant - Dennis

Nyamu for the plaintiff/applicant

Atudo for the 1st defendant present

No appearance for the Attorney General

Plaintiff present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**