

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. E011 OF 2025

JOSEPH KIMETTO-----
PLAINTIFF/APPLICANT

VERSUS

TUWAN FARM LIMITED-----1ST
DEFENDANT/RESPONDENT

MARTIN MACHARIA KAMAU-2ND
DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR
KITALE-----3RD
DEFENDANT/RESPONDENT

RULING

1. The court is asked to reinstate this suit for hearing on the merits. The reasons are contained on the face of the application dated **18/2/2026** and in a supporting affidavit of Joseph Kimetto, the applicant herein. He blames his former law firm for the mistakes.
2. The applicant states that he is elderly, sickly, and likely to lose a property that he had bought from the 1st respondent and was hoping to develop. The applicant states that the defendants will not suffer prejudice if the suit is reinstated for hearing on the merits.

3. The application is opposed through a replying affidavit of Martin Macharia Kamau, the 2nd respondent, sworn on **10/4/2026**, for being frivolous, lacking merit, filed after an unexplained inordinate delay, for no sufficient cause, or reasonable explanation for non-compliance with court directives, abuse of the court process, and for lack of merit.
4. The 2nd respondent deposes that the suit was dismissed on **23/10/2025** and not **17/10/2025** as alleged. It is deposed that the date **23/10/2025** had been taken by consent for the applicant to comply with the previous court orders issued in the presence of his advocate, which unfortunately he did not comply with, in a deliberate, inexcusable manner, and as an abuse of the court process.
5. Further, the 2nd respondent deposes that the said law firm acted negligently and without due diligence, and the only option for the applicant is to sue it for negligence. The 2nd respondent deposes that equity aids the vigilant and in this case the applicant has been indolent, for four months, in filing this application, which delay is inordinate, unjustified, and that the plaintiff has come to court with tainted hands, after realising that a bill of costs has been filed against him.

6. The 2nd respondent deposes that the applicant has not demonstrated that his suit raises triable issues warranting reinstatement, as no compliance documents have been attached to the application.
7. Again, the 2nd defendant deposes that litigation must come to an end, the plaintiff is not being truthful, the application is an afterthought aimed at wasting the court's time and energy, and that the plaintiff has not given a good reason why he failed to comply after filing the suit on **17/3/2025**.
8. The 2nd defendant deposes that the conduct of the applicant has been mischievous and in bad faith, to be entitled to any discretion in his favour.
9. This suit was filed on **18/3/2025**, after which summons to enter appearance were extracted and served upon the defendants on **28/3/2025** and **4/4/2025**, respectively. Thereafter, the plaintiff took a mention date for **1/7/2025** and **9/10/2025**.
10. On **1/7/2025**, the applicant failed to attend court or comply with **Order 11** of the Civil Procedure Rules. A mention date for **9/10/2025** was issued. The mention date was served upon the applicant by the Deputy Registrar. Mr. Too, advocate for the applicant, appeared before the court while Mr. Majanga, advocate, appeared for the 2nd respondent.

- 11.** Learned counsel for the plaintiff told the court that he wanted to withdraw the suit since the subject property was less than **Kshs. 20,000,000/=**. The court ordered that a formal application be filed since the 2nd defendant had already filed a statement of defence dated **15/5/2025**, raising the issue of *res judicata* and the suit being frivolous and vexatious. A mention date was given for **23/10/2025**, and the applicant was directed to serve the other defendants.
- 12.** When the matter came up on **23/10/2025**, there was neither a formal notice filed to withdraw the suit, nor an appearance by the applicant's counsel on record, nor evidence of service of the mention notice upon the 1st and 2nd respondents.
- 13.** Learned counsel Mr. Majanga urged the court to find that there had been no compliance with **Order 11** of the Civil Procedure Rules, evidence of service upon the 2nd respondent, and or filing of a formal notice to withdraw the suit, or in the alternative any interest in prosecuting the suit. The court proceeded to dismiss the suit for non-compliance.
- 14.** The court record shows that there was no action on the file until the 2nd defendant filed a bill of costs dated **13/1/2026** and took a date for a hearing. The record shows that a firm of Carol Chepngetich Co. Advocates then filed a notice of appointment dated

5/2/2025, which the court doubts complies with **Order 9 Rule 9** of the Civil Procedure Rules. **Order 11 Rule 2** of the Civil Procedure Rules provides that after the close of pleadings, parties shall, within **10** days, compile, file, and serve a pre-trial questionnaire as provided in **Appendix B**.

15. Order 11 Rule 3(1) of the Civil Procedure Rules provides that within **30 days** after the close of pleadings, a court shall convene a case conference with a view to furthering expeditious disposal of the case management to:

- (a) Consider compliance with **Order 3 Rule 2** or **Order 7 Rule 5 of the Civil Procedure Act**.*
- (b) Explore Alternative Dispute Resolution on contested issues.*
- (c) Secure parties' agreement on a specific schedule of events in the proceedings.*
- (d) Narrow and resolve outstanding issues.*
- (e) Create a timetable for the proceedings.*
- (f) Consider consolidation of the suit.*
- (g) Identify the test suit or stay of other suits.*
- (h) Deal with interlocutory applications.*
- (i) Order the filing and service of any necessary particulars within a specific period.*

16. Order 11 Rule 7 (2) of the Civil Procedure Rules provides that it shall be a duty of every party and or his advocate to strictly comply with the provisions of **Order 11 Rule 3(2)** of the Civil Procedure Rules and to give such information as the judge may require, including but not limited to the number of

witnesses expected or to be called in the trial and the nature of evidence to enable the court consider and settle on the length of time required at the hearing.

17. Order 11 Rule 7(3) of the Civil Procedure Rules states that failure by the party or his advocate to comply shall be deemed as a violation of **Sections 1A and 1B** of the Civil Procedure Act, and the court may order otherwise.

18. From the foregoing, the court is asked to set aside its order made on **23/10/2025**, reinstate the suit for hearing on merits, stay the taxation of the bill of costs, and stay execution of its dismissal order. The elephant in the room is that, other than filing the plaint listing the documents to be relied upon and the witnesses, the witness statements and the documents were not filed alongside the plaint or through a pre-trial questionnaire as per Appendix **B**.

19. The applicant has not explained the delay since **March 2025**. The applicant has not explained why the court orders issued were not adhered to, to expedite the disposal of his suit.

20. Other than stating that he visited the court registry after a bill of costs was filed and a date taken, the applicant does not state when he last visited the former lawyer's offices to establish the progress of his case.

21. A case belongs to the party, as held in **J.G. Builders -vs- Plan International [2015] eKLR**. A party has a duty to pursue the same and constantly check its progress. Failure to do so is a demonstration of indolence on the litigant's part. A litigant has a duty to pursue the prosecution of his case. A diligent plaintiff would have known the steps required and the requirements to do so through his lawyer. Tangible steps for a follow-up are missing in the plaintiff's supporting affidavit. See **Multiple Hauliers -vs- Enock Bilindi Musundi & Others [2021] eKLR**.
22. In **Mwangi Gachiengo & Others -vs- Mwaura Githuku & Another [2019] eKLR**, the court said that once a matter is filed, it belongs to the party and not their lawyer, whose responsibility is to constantly get in touch with the lawyer on the position of the matter.
23. In **Savings & Loan (K) Ltd -vs- Susan Wanjiru Muritu, HCC No. 397 of 2002**, the court held that it could not set aside dismissal of a suit solely on a ground of mistake by counsel for not attending court, for a party has a corresponding duty to constantly check on the progress of his case.
24. In **Mwangangi -vs- Mugi [2024] eKLR**, the court said that, whereas it is true mistakes of counsel should not be visited on a litigant, where a litigant

has instructed counsel, he has an obligation to follow up on the instructions given to ensure that they are executed and executed in good time.

25. In **Habo Agencies Ltd -vs- Wilfred Odhiambo Musingo [2015] eKLR**, the court said that it is not enough for a party to blame his advocate for all manner of transgression in the conduct of litigation, for parties also have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.

26. In **Bi-Mach Engineers Ltd -vs- James Kahoro Mwangi [2011] eKLR**, the court held that if an advocate was simply guilty of inaction, that is not an inexcusable mistake which the court may consider with some sympathy.

27. In this application, I do not see evidence of any attempts since **March 2025** by the applicant to get in touch with his erstwhile lawyers until almost eight months down the line, when a bill of costs by the 2nd respondent came calling at his door.

28. Sufficient cause, as held in **Kamau & another -vs- Inspector General Of Police & another [2026] KEHC 1038 (KLR)**, depends on the circumstances of each case. It must be an explanation of such quality or value as would justify setting aside the order of dismissal. It must be reasonable and adequate in law. Equity aids the vigilant but not the

indolent. Delay defeats equity. A four-month delay is inordinate and not explained in this matter.

- 29.** Courts may refuse to assist those who have slept on their rights and fail to pursue their claims promptly. Conscience and good faith unlock the court's discretion. The discretion as held in **Shah -vs- Mbogo [1967] EA 116**, is not aimed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.
- 30.** Delay in moving to court on time is a factor for consideration, as held in **Richard Nchapi Leiyagu -vs- Independent Electoral & Boundaries Commission & 2 others [2014] eKLR** and **Mobile Kitale Service Ltd -vs- Mobil Oil (K) Ltd [2004] eKLR**.
- 31.** The applicant appears to have been awakened from his deep slumber by service of a bill of costs. A man guilty of laches of this length does not deserve the court's discretion. See **Benjoh Amalgamated Ltd & Another -vs- Kenya Commercial Bank Limited [2014] eKLR**.
- 32.** The other issue raised by the 2nd respondent is the arguability of the applicant's suit. The statement of defence has raised the issue of *res judicata*, a vexatious and frivolous suit. The applicant is silent on those issues.

33. I think I have said enough that this application is bound to fail. It is so dismissed.

34. Orders accordingly.


Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **13th** day of **May 2026**.

In the presence of:

Court Assistant - Dennis

Mr. Mutai for the plaintiff present

Mr. Majanga for the 2nd defendant present



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