



Njubi v Nairobi City Water & Sewerage Company & 2 others (Environment and Land Case E313 of 2022) [2025] KEELC 5958 (KLR) (26 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E313 OF 2022
CG MBOGO, J
AUGUST 26, 2025**

BETWEEN

MONICA MUTHONI NJUBI PLAINTIFF

AND

NAIROBI CITY WATER & SEWERAGE COMPANY 1ST DEFENDANT

ATHI WATER WORKS DEVELOPMENT AGENCIES 2ND DEFENDANT

JUANCO LIMITED 3RD DEFENDANT

RULING

1. Before this court is the notice of motion dated 4th January, 2025 filed by the plaintiff/ applicant and it is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules seeking the following order:-
 1. That an order be and is hereby granted setting aside the orders issued on 13th December, 2023 which dismissed the suit.
 2. That the suit be reinstated for hearing.
 3. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that the suit was set down for hearing on 13th December, 2023 and that she had instructed an advocate who had conduct of the matter including the hearing. She deposed that she was not informed that the matter was set down for hearing on the said date, and that neither did the advocate appear in court, which led to the dismissal of the suit for want of prosecution. The plaintiff/applicant deposed that she appointed new advocates to investigate which took time as it involved visiting government authorities and county governments which are highly bureaucratic. Further, that failure to attend court is regrettable and that the mistake



- of counsel should not be visited upon her as she has been keen to have the suit heard on merits. She deposed that the suit has merit and raises arguable issues which ought to be brought to the attention of this court and determined on merits.
3. The application was opposed vide the replying affidavit of Eng. Nahashon Njuguna, the chief executive officer of the 1st defendant/respondent sworn on 2nd April, 2025. The 1st defendant/respondent deposed that the matter was scheduled for hearing on 13th December, 2023 which date had been served upon the plaintiff through personal service. Further, that on 13th December, 2023 and in the preceding 5 months, the plaintiff/applicant did not have an advocate on record as the firm of Nasimiyu & Co. Advocates filed an application to cease acting. It was deposed that the plaintiff/applicant's assertion contradicts the court record and is thus misleading. That having been served with the hearing notice, the onus was on the plaintiff/applicant to prosecute her case which she did not, and cannot blame the same on the advocate on record. Further, that the 1st defendant/respondent's served her with the court's directions at her known place of residence.
 4. The 1st defendant/respondent deposed that it is unclear when the plaintiff/ applicant appointed the new advocate, the suit having been dismissed and there is no evidence of any documentation to the government agencies. Further, it was deposed that the plaintiff/applicant lost interest in the case, and that this application is an abuse of the court process since the plaintiff/applicant was aware of the taxation proceedings before the taxing officer where a ruling was delivered and a certificate of taxation issued. Further, that there is inordinate delay and the application ought to be dismissed with costs.
 5. The 3rd defendant/respondent filed its replying affidavit which was sworn on 25th April, 2025 by JungHae Wainaina, the chief executive officer. The 3rd defendant/respondent deposed to the history of the suit and the instant application. It was deposed that on 13th December, 2023, the suit came up for hearing and neither the plaintiff/applicant nor her advocates were present, and that the same was dismissed for want of prosecution with costs to the defendants/respondents.
 6. The 3rd defendant/respondent further deposed to the taxation proceedings before the taxing officer, and that the application before this court would be the plaintiff's/applicant's fourth which is abhorrent to the spirit of procedure that calls for the efficient use of judicial time and resources. It was further deposed that the application does not disclose any valid reasons for failure to attend court, and reinstating this suit two years after it had been dismissed. The 3rd defendant/respondent deposed that the application has been brought as an afterthought, and the same ought to be dismissed with costs.
 7. The application was canvassed by way of written submissions. The plaintiff/applicant filed her written submissions dated 22nd April, 2025. She submitted that the firm of Nasimiyu & Co. Advocates failed to follow through the process contemplated under Order 9 Rule 13 (1) of the Civil Procedure Rules to enable her make alternative arrangements as regards representation. That as a result, on 13th December 2023, when the matter was listed for hearing, she thought that she was still represented by the said firm. While relying on the cases of *Belinda Murai & 9 Others v Amos Wainaina* [1979] KECA 25 (KLR), and *Hui Commercial Enterprise (Africa) Company Limited Aka Hui Commercial & another v Salif Michael Ngunguli & 13 others* [2021] KECA 1059 (KLR), the plaintiff/applicant submitted that she has shown interest in prosecuting the suit, and thus the same should be reinstated for hearing on merits.
 8. The plaintiff/applicant further submitted that land being an emotive issue, there is a creed that land matters ought to be heard on the merits. Reliance was placed in the cases of *Gitamaiyu Trading Company Ltd v Nyakinyua Mugumo Kiambaa Co. Ltd & 11 others* [2019] KECA 1007 (KLR) and *Lucy Bosire v Kehancha Div Land Dispute Tribunal & 2 others* [2013] KEHC 681 (KLR). Further, she submitted that the defendants/respondents being public agencies should be at the forefront in following the law.



9. In conclusion, the plaintiff/applicant submitted that the court's calling is to strike a balance and do substantive justice. She urged the court to reinstate the suit so that it is heard on merits.
10. The 1st defendant/respondent filed its written submissions dated 7th May, 2025 where it raised two issues for determination as follows: -
 - a. Whether the plaintiff's application to set aside the judgment of court and reinstate the suit is warranted.
 - b. Who should bear the cost of this application.
11. On the first issue, the 1st defendant/respondent submitted that the courts have numerously held that the case belongs to the litigant, and in this case, there was nothing that stopped the plaintiff/applicant from following up on her matter. To further buttress on this issue, the 1st defendant/ respondent relied on the cases of John Mukuha Mburu v Charles Mwenga Mburu [2019] eKLR, and Union Insurance Co. of Kenya Ltd v Ramzan Abdul Dhanji, Civil Application No. Nai. 179 of 1998, Oyieko v Henry & 4 others (Environmental & Land Case 48 of 2019) [2024] KEELC 4509 (KLR) (6 June 2024) (Ruling).
12. The 1st defendant/respondent further submitted that to unclog this court's system of backlog, the suit was rightfully dismissed for want of prosecution, and that the plaintiff/applicant has the remedy to prosecute the matter afresh as it was in the case of Kenya Commercial Bank Limited v Orapa & another (Commercial Case E336 of 2023) [2024] KEHC 4130 (KLR) (Commercial and Tax) (30 April 2024) (Ruling). Further, it was submitted that the plaintiff/applicant has not come to court with clean hands owing to the contradictory accounts contained in the withdrawn notice of motion dated 30th October, 2024 and the instant application. Further, that there is inordinate delay in bringing forth this application in the first instance. That although there is no defined time to what constitutes delay, it was submitted that the same has been made over a year since the dismissal, and that the plaintiff/applicant has not demonstrated sufficient reasons for the delay.
13. The 3rd defendant/respondent did not file its written submissions. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the plaintiff/applicant and the 1st defendant/respondent. I am of the view that the issue for determination is whether this court can/ ought to set aside the orders made on 13th December, 2023.
14. This matter came up for hearing on 13th December, 2023. However, the plaintiff/applicant did not attend court and neither was she represented by counsel. Prior to this, the firm of Nasimiyu & Co. Advocates which was on record for the plaintiff had filed an application to cease acting. The same application was served upon the plaintiff/applicant as per the court record, and thus the argument that she was represented is thus incorrect. From the record, the plaintiff/applicant has not disputed service of the hearing notice and her conduct in handling this matter speaks for itself. The Court of Appeal in Njue Njagi versus Ephantus Njiru & Another [2016] eKLR stated that dismissal of a suit for non-attendance by the plaintiff or for want of prosecution amounts to a judgment in that suit.
15. This court has discretion to set aside judgment or order to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake, as it was held in the case of Shah versus Mbogo & Another [1967] E.A. 116.
16. The plaintiff/applicant argued that she was represented by an advocate, a fact which is not true. She went ahead in her submissions and argued that the firm of Nasimiyu & Co. Advocates failed to comply with Order 9 Rule 13 (1) of the Civil Procedure Rules, an issue that was introduced in the submissions, thus irrelevant at this stage. The decision to bring this file more than a year since the order was made



is an afterthought owing to the plaintiff's/applicant's awareness and/or participation in the taxation proceedings. This is clearly not a case of mistake of counsel but rather pure indolence on the part of a litigant. Unfortunately, this court cannot exercise its discretion to aid a party who is indolent.

17. The notice of motion dated 4th January, 2025 lacks merit, it is a waste of the court's precious time, and it is hereby dismissed. Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 26TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

26/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Nini holding brief for Mr. Maina for the 3rd Defendant /Respondent

Mr. Kaniaro for the Plaintiff

Mr. Shemulla for the 1st Defendant - absent

