



Chepkoech alias Milcah v Chelugui & another (Environment and Land Appeal E038 of 2022) [2024] KEELC 480 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 480 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND APPEAL E038 OF 2022
MN MWANYALE, J
JANUARY 31, 2024**

BETWEEN

MILKA CHEPKOECH ALIAS MILCAH PLAINTIFF

AND

KIBAES CHELUGUI 1ST DEFENDANT

NIMROD KIPTUM KOECH 2ND DEFENDANT

RULING

1. On 25/5/2023, the Court dismissed for non-attendance an application dated 12/5/2023. On the said date none of the advocates/ parties were present when the matter was called out.
2. Upon learning of the dismissal the Advocates then on record for the Applicants. Merris Cheruiyot Melly and in particular Mr. Victor Kiprono Learned Counsel filed an application dated 26/5/2023 seeking to vary the said dismissal order.
3. It is this application dated 26/5/2023 that is subject of this ruling. The grounds in support of the application are interalia, that Counsel for the Applicant arrived Court at 9.30 am due to a personal emergency and found that the application had been dismissed for non-attendance and that this mistake for late arrival in Court was occasioned by the Counsel and ought not to be visited upon the litigants.
4. A new set of Advocates appeared in the matter, Mr. Korir Abdulatif, appeared for the Applicants having taken over the conduct of suit from Messrs Cheruiyot Melly for the Applicants and Mr. Orina appeared for the Respondent having taken over from Messrs Bitok Sambu Advocates. Mr. Orina filed grounds of opposition stating interalia, the application was spurious and lacked merits, the Court was right in dismissing the application dated 25/5/2023 and the reinstatement of the application would prejudice the Plaintiffs fair trial and case.
5. The application was argued orally today by the Counsels who appeared for the respective parties.



6. Mr. Korir Learned Counsel for the Applicant retained the grounds in support of the application and urged the Court to allow the application on account of mistake of Counsel. While Mr. Orina submitted that the emergency alluded by the deponent was not disclosed hence the application ought to be dismissed.
7. I have analyzed the application, considered the submission by Counsels and frame one issue for determination being whether the application is merited.
8. The depositions on oath by the deponent Mr. Victor Kiprono in support of the application were not challenged by way of a replying affidavit, but the Respondent filed grounds of opposition.
9. The Court finds thus the Applicants Advocate had an undisclosed emergency which made him get to Court at 9.30 am. Where upon the matter had been dealt with, prompting the drafting of the application to very next day.
10. That would point to a mistake on the part of Counsel, and the Counsel filed the application to vary the dismissal orders promptly and even swearing the affidavit themselves.
11. Mistake on Counsel has been previously been identified as a ground to set aside dismissal orders, and having found that the mistake herein was purely a mistake on Counsel, the same ought not to be visited on the litigant, and the Court finds merit on the application and allows reinstatement of the application dated 12/5/2023 so as the same be heard on its merits.
12. Thrown away costs of kshs 3,000/= are awarded to the Respondents in any event.
13. Orders accordingly.

RULING READ AND DELIVERED AT KAPSABET THIS 31ST DAY OF JANUARY 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of:-

1. Mr. Orina for the Respondent
2. Mr. Korir for the Appellant

