



Hussein & 5 others v Abdalla & another (Environment & Land Case E007 of 2024) [2025] KEELC 891 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 891 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E007 OF 2024
FM NJOROGE, J
FEBRUARY 27, 2025**

BETWEEN

**EDARUS SALIM HUSSEIN 1ST PLAINTIFF
SOFIYA SALIM HUSSEIN 2ND PLAINTIFF
ZENA SALIM HUSSEIN 3RD PLAINTIFF
SALMA SALIM HUSSEIN 4TH PLAINTIFF
AISHA OMAR MOHAMED 5TH PLAINTIFF
GHALIB AHMED ALWLY 6TH PLAINTIFF**

AND

**ANWAR SHEIKH SAID ABDALLA 1ST DEFENDANT
REGISTRAR OF LANDS, LAMU 2ND DEFENDANT**

RULING

1. On 13/11/2024, this suit was dismissed for non-attendance, prompting the Plaintiffs to file a Notice of Motion application dated 13/11/2024, which is the subject of this ruling. The application was brought under the provisions of section 1A, 1B and 3A of the *Civil Procedure Act* and Order 12 Rule 7, and Order 51 of the *Civil Procedure Rules, 2010*. The Plaintiffs sought the following orders: -
 1. Spent.
 2. That this honourable court be pleased to review, set aside and/or vary the order dismissing the Plaintiff's suit herein for non-attendance, together with all other consequential orders issued on the 13/11/2024.



3. That this Honourable Court be pleased to reinstate the suit for hearing and determination on merits.
4. That costs of this application be provided for.
2. The application is premised on the grounds set forth in the Notice of Motion and the Supporting Affidavit of Bilhah S. Wangu, counsel for the Plaintiffs, sworn on 13/11/2024. Counsel narrated that on the 13/11/2024 when the suit was scheduled for hearing, the Plaintiffs' advocate and witness were logged on to the virtual court platform but could not address the court when the matter was called out due to technical issues; that upon fixing the issue, counsel rejoined the platform when he found out that the matter had been dealt with and orders issued.
3. The 1st Defendant filed a Replying Affidavit which he swore on 27/1/2025 stating that the Plaintiffs are not keen in prosecuting the suit as they are focused in other matters over the same subject matter. He added that considering the Plaintiffs' previous suits ELC No. 78 of 2021 and ELC Petition No. 24 of 2021, were dismissed, there is no reason to reinstate the present one.
4. The application was heard orally on 28/1/2025 when both sides presented their brief arguments which I have duly considered. The main issue for determination is whether the orders issued on 13/11/2024 should be reviewed or set aside.

Analysis

5. There is no doubt that this suit was dismissed for non- attendance, which authority is found under Order 12 of the [Civil Procedure Rules, 2010](#). Order 12 Rule 7 provides thus: -

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
6. The court has discretion to set aside a judgment or order to avoid injustice or hardship resulting from an accident inadvertence or excusable mistake. See *Shah v Mbogo & Another* [1967] EA 116.
7. In *Patel v EA Cargo Handling Services Ltd* [1974] EA 75 the court stated that:

“There are no limits or restrictions on the judge's discretion except that if he does vary the judgment he does so on such terms as may be just... The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules.”
8. The guiding principles for exercise of discretion were well stated by the Court of Appeal in [Simon Thuo Mwangi v Unga Feeds Limited](#) [2015] eKLR as thus: -

“On reasons presented, it takes course to set aside or refuse to set aside. The court thus exercises a judicial discretion all the time having in mind what is just and fair in the case. The reason to set aside must therefore be based on good grounds or reasons advanced not on a whim or caprice.”
9. In this matter, both parties were not present on the hearing date. The Plaintiffs' counsel explained that he was actually logged in to the session, but was unable to be heard when the matter was called out; that by the time he managed to change his gadget, orders had already been issued dismissing the suit.



10. Sections 1A and 1B of the *Civil Procedure Act* call on this court to determine disputes in a just manner, and by the same thread, the provision requires court business to be expedited. By these provisions, the overriding objective is aimed at giving justice to all parties who will be affected by the outcome of a case. Section 3A of the *Civil Procedure Act*, donates power to this court to issue orders that are necessary for the end of justice. Allowing the matter to be heard on merit is one of such orders.
11. Consequently, having carefully considered everything in totality, this Court holds and finds that the instant Application is merited. The said Application dated November 13, 2024 is hereby allowed entirely. The costs thereof shall be in the costs. In the event there is any party that has not finalized compliance this court deems it fit to order, and hereby orders that the plaintiffs shall perfect their compliance within 14 days from the date of this order and the defendants shall follow suit within 14 days from the date of the expiry of the period granted to the plaintiff. The matter shall be listed on 27/3/2025 for the fixing of a hearing date. To avoid unnecessary adjournments, upload of the ruling herein on the CTS shall be construed as sufficient notice of this compliance order to all parties.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 27TH DAY OF FEBRUARY 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

