



**Wanjiru v Ahmed (Environment & Land Case E182 of 2021)  
[2024] KEELC 924 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 924 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E182 OF 2021  
LN MBUGUA, J  
FEBRUARY 22, 2024**

**BETWEEN**

**ANTHONY KIMANI WANJIRU ..... PLAINTIFF**

**AND**

**ABDI RAHMAN HAJI AHMED ..... DEFENDANT**

**RULING**

1. The Plaintiff's Notice of Motion dated 29.9.2023 is for determination. He seeks orders to set aside this Court's orders of 25.9.2023 dismissing his claim, and he desires that the suit be reinstated.
2. The application is based on grounds on its face and on the supporting affidavit sworn on 26.9.2023 by Peris Magoma Nyakundi, counsel in conduct of the case for the Plaintiff. She avers that on 25.9.2023, this case was coming up for hearing and was listed as number 3 on the cause list. That on the same date, she had another matter in a different court and logged in to this court after 9.00 am, waited in the lobby and by the time she was admitted, the matter had been called out.
3. That when the Honorable Judge finished calling the cause list, she personally enquired about this suit from the Judge who directed that she follows up with the court's registry and move the court appropriately. That upon perusal of the file, she discovered that this suit had been dismissed for non-attendance which was purely inadvertent and attributed to delay due to handling another matter.
4. The application is opposed by the Defendant vide his replying affidavit sworn on 16.1.2024. He avers that he was with his advocates in their offices on 25. 9.2023 for hearing of this case. That when the matter was called out, there was no response from the Plaintiff's side and the court decided to place the file aside for a few minutes and called 2 cases before calling out the matter again.
5. He avers that there is no evidence that counsel for the Plaintiff was in another court and there is no indication that the Plaintiff was ready to proceed with the matter on the material date.



6. I have considered all the rival arguments. The issue for determination is whether this matter deserves to be reinstated.
7. The matter was scheduled for hearing on 25.9 2023, of which the said date had been taken by consent. However, on the said date, there was no attendance by the Plaintiff, but the defence counsel was present. The court proceeded to put the file aside “to see if plaintiffs will turn up”. They did not turn up when the matter was called again at 9.25.am.
8. I have however taken into consideration that the current application was filed in a timely manner, and the absence of the advocate doesn’t appear to have been deliberate. I have also considered that the suit parcel is contested and it is in the interest of justice that the issues raised are determined after a full hearing. See *Esther Wamaitba Njibia & 2 others v Safaricom Limited* [2014] eKLR.
9. In the circumstances, the Plaintiff’s application is allowed but with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Nyakundi for Plaintiff

Awadu for Defendant

Court assistant: Eddel

