



**Ochieng (Suing on his Behalf and on the Behalf of the Residents of Gem Central Location)
& another v Ministry of Interior and Coordination of National Government & another
(Civil Application E092 of 2024) [2025] KECA 919 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 919 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E092 OF 2024
HA OMONDI, LK KIMARU & AO MUCHELULE, JJA
MAY 23, 2025**

BETWEEN

**CALEB ONYANGO OCHIENG (SUING ON HIS BEHALF AND
ON THE BEHALF OF THE RESIDENTS OF GEM CENTRAL
LOCATION) 1ST APPLICANT**

KEPHA OTIENO ODONGO 2ND APPLICANT

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT**

PROF KITHURE KINDIKI 2ND RESPONDENT

*(Being an application for the reinstatement of the Notice of Motion dated
11th July 2024 dismissed for non-attendance on 5th November 2024)*

RULING

1. Rule 58(3) and (4) of the Court of Appeal Rules, 2022 provides that:
 - “ 3. Where an application has been dismissed or allowed under sub-rule (2), the party in whose absence the application was determined may apply to the Court to restore the application for hearing or to rehear it, as the case may be, if that party can show that he or she was prevented by any sufficient cause from appearing when the application was called on for hearing.
 4. An application made under sub-rule (3) shall be made within thirty days of the decision of the Court, or in the case of a party who would have been served



with notice of the hearing but was not so served, within thirty days after that party's first hearing of that decision.”

2. The two conditions for the reinstatement of an application dismissed or allowed for non-attendance are whether a sufficient cause has been shown by the applicant, and whether the application has been brought within 30 days of the decision, or 30 days after the party who ought to have been served but was not served first heard of the decision. In *Peter Nyamu Kabeu -vs- Eliud Karani*, Civil Application No. NAI 293 of 2000, this Court reiterated that, in an application seeking to reinstate an earlier application which was dismissed for want of prosecution it has to be kept in mind that the Court is not dealing with the merits or demerits of the application which is sought to be reinstated. The merits and demerits of the application belong to the court which will ultimately deal with it, if it is reinstated.
3. Materially, the decision to reinstate or not to reinstate an application dismissed for non-attendance is an exercise of discretion (see *Imbochi -vs- Leopard Beach Resort & Spa [2024]KECA 726 (KLR)*). The applicant must be deserving of the exercise of the discretion in his favour.
4. The applicant, Caleb Onyango Ochieng (suing on his behalf and on behalf of the residents of Gem Central Location), filed a petition in the High Court at Homabay to challenge the decision by the Ministry of Interior and Coordination of National Government, the 1st respondent, and Prof. Kathure Kindiki, the 2nd respondent, which had created Asumbi Town Sublocation, allegedly without public participation. In the petition he sought an interim injunction. The court heard the injunction application. In a reserved ruling, both the application and petition were dismissed. The applicant filed before this Court an application dated 11th July 2024 seeking a conservatory order restraining the respondents from effecting the creation of the sub-location. The application was certified urgent and came for hearing on 5th November 2024 but was dismissed because neither the applicant nor his counsel attended to prosecute the same.
5. On the same day, the applicant's counsel filed the instant application to have his application reinstated. He explained that he had prepared for the application and was on the virtual platform, but that he had connectivity problems such that he was not able to address the Court when his matter was called out. He tried to raise his hand but the Court did not notice him. When he got connected, he addressed the Court which informed him that his matter had been dealt with by its dismissal. He was advised to file the present application, which he did promptly on the same day.
6. This factual position was not challenged by the respondents whose replying affidavit only indicated that the motion had no merits and ought to be dismissed.
7. Learned counsel Mr. Obiero for the applicant argued that the technical challenge during the virtual hearing had prevented him from addressing the Court on his application which had not been opposed. He urged that his client was entitled to a fair hearing to ensure procedure fairness and that, in dealing with the application, the Court should consider the public interest of the dispute.
8. We are satisfied that the application was filed promptly on the same day of dismissal; we take judicial notice that connectivity challenges are a lived reality even in the new found convenient use of technology. We have no reason to disbelieve the explanation by learned counsel, which is reasonable and acceptable. There is no indication that he seeks to delay or obstruct justice. In the circumstance, the application dated 11th July 2024 is reinstated.
9. Costs shall abide the application.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF MAY, 2025

H.A. OMONDI



.....
JUDGE OF APPEAL

L. KIMARU

.....
JUDGE OF APPEAL

A.O. MUCHELULE

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

