



**Rift Valley Enterprises Limited v Kode & another (Environment and Land Miscellaneous Application 06 of 2024) [2024] KEELC 3933 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3933 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 06 OF 2024  
A OMBWAYO, J  
MAY 15, 2024**

**BETWEEN**

**RIFT VALLEY ENTERPRISES LIMITED ..... APPELLANT**

**AND**

**PAULINE NEKESA KODE ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH KIPANGAS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Rift Valley Enterprises Ltd has come to court with application dated 14<sup>th</sup> March 2024. The applicant seeks orders that the Honorable Court be pleased to set aside and vacate the *ex-parte* Orders issued on 1 3<sup>th</sup> March 2023 by Hon. Justice Antony O. Ombwayo dismissing the suit for want of prosecution. This court be pleased to hear the said application and the Applicants suit be reinstated for hearing.
2. The application is based on grounds that on the 13th day of March 2024, this matter was scheduled for the hearing of the application dated on 16th of February 2024. However, due to unforeseen circumstances, the court directed the dismissal of the application due to the non, attendance of the parties involved,
3. Counsel for the Applicant was logged in on the e-filing provided link at unaware that the court had changed the link to This lack of communication led to confusion and prevented timely access to the proceedings.
4. Despite being present on the e-filing platform and waiting until 9:45 am to be admitted to court. The advocate was not granted access. As a result, the advocate physically attended court, only to discover that the matter had already been mentioned, and a decision to dismiss was made due to non-attendance.



5. The non-attendance was solely due to the unforeseen changes in the e-filing link. Advocates appearing for the first time in court would not have been aware of these changes, which unfairly disadvantaged the Applicant
6. The Applicant has demonstrated a sincere intention to pursue this matter diligently. This is evidenced by the timely filing of a response to the Preliminary Objection raised by the Respondents through a Replying Affidavit dated 11th day of March 2024.
7. Since this court has a higher duty to do justice and be fair. it is only fair that the orders of dismissal be set aside and the orders of dismissal be vacated and the matter be given a hearing date.
8. The Respondent/Applicant has a merited defence to the suit with triable issues. the constitution of Kenya 2010 guarantees one to be subjected to fair administration of Justice.
9. This Application has been brought within a reasonable time being that order was entered on the 13<sup>th</sup> day of March 2024 and this application has been brought a day after and further showing keenness of the Applicant to defend the matter.
10. It is a trite law that a party should not be condemned unheard and it is in the interest of Justice that the *ex-parte* Judgment entered on the 16<sup>th</sup> day of January 2024 be set aside and the matter be heard on merits.
11. I have considered the application and grounds therein and do find that the explanation given by the applicant for failure to attend court is sufficient to warrant the reinstatement of the suit. The suit is hereby reinstated with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 15<sup>TH</sup> DAY OF MAY 2024.**

**A O OMBWAYO**

**JUDGE**

