



**Juja Coffee Exporters Limited v National Bank of Kenya Limited & 3 others (Environment & Land Case 10 of 2019) [2024] KEELC 4650 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4650 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 10 OF 2019  
NA MATHEKA, J  
JUNE 11, 2024**

**BETWEEN**

**JUJA COFFEE EXPORTERS LIMITED ..... PLAINTIFF**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**VIRGIN PACKING LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**BAKHRESA GRAIN MILLING (K) LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**GRAIN BULK HANDLERS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The application is dated July 26, 2023 and is brought under Section IA, 1B and of the [Civil Procedure Act](#) and Order 12 Rule 7 and Order 51 Rule 1 of the [Civil Procedure Rules](#) seeking the following orders;
  1. That this Honourable Court be pleased to certify this Application as urgent and to direct the same be heard ex parte in the first instance.
  2. That this court set aside and/or vary the orders made on the 24<sup>th</sup> of July 2023 dismissing the Plaintiffs suit suo moto.
  3. That this Honourable Court be pleased to reinstate the suit and allocate a hearing date for the suit on its merits.
  4. That the costs of this application be provided for.
2. It is based on the grounds that this matter was set to be heard on the 24<sup>th</sup> day of July 2023 before Hon. Matheka. That the Honourable Court issued orders dismissing the suit on the 24<sup>th</sup> day of July 2023 due to the Plaintiffs non - attendance. That the above orders were made through no fault or wrongdoing of the Plaintiff/ Applicant who is ready and willing to prosecute this matter. That the same was due



to mistake of the Plaintiffs Advocate. That the plaintiff is desirous of being heard on the merits of his case and should be given an opportunity to be heard. That this Court has power to grant the orders sought in the best interests of justice and fairness. That unless the orders sought herein are granted the plaintiff stands to suffer irreparable loss and damage. That no prejudice will be suffered if the orders sought are granted.

3. The Respondents opposed the application stating that it is the cardinal duty of a litigant to follow up on their case. That from the history of this matter the Applicant has shown lethargy in pursuing their case as it has been adjourned severally at their behest.

4. This court has considered the application and submissions therein. This suit was dismissed for non-attendance of the Applicant when it came up on July 24, 2023. The relevant law governing setting aside judgment or dismissal is Order 12 Rule 7 of the *Civil Procedure Rules*. It provides as follows;

Where under this order judgment has been entered or a suit dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just”

5. The determination of whether to or not to allow an application for setting aside judgment or an order for dismissal of a suit due to non-attendance of a Plaintiff is within the wide discretion of the court. This discretion has to be exercised judiciously, as was stated the case of *Shah vs Mbogo* (1979) EA 116 quoted with approval in the case of *John Mukuba Mburu vs Charles Mwenga Mburu* (2019) eKLR, where that court stated that;

.....this discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designated to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the cause of justice.”

6. For the Court to exercise its discretion in favour of the Applicant, it has to be satisfied that there is sufficient cause or reason to warrant it to be put into use in setting aside the order of dismissal and subsequently reinstate the suit. Sufficient Cause was defined by the Supreme Court of India in *Parimal vs Veena* which was cited with approval in the case of *Wachira Karani vs Bildad Wachira* (2016) eKLR. In the case, the said Supreme Court stated that;

sufficient cause” is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously”

The court in the above case added that while deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned and that the technicalities of the law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgment impugned before it. The test to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called for hearing. Sufficient cause



is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application. Thus, the defendant must demonstrate that he was prevented from attending court by a sufficient cause.”

7. In the instant case the plaintiff’s suit herein was dismissed on the July 24, 2023 for the reason that Counsel on record for the plaintiff inadvertently misdiarized the same. I have perused the court record and find that the Applicant has been given the final adjournments on October 26, 2021 and January 25, 2022. This matter was filed way back in 2019. And as late as 2021 the Applicant had not complied with order 11. I find that both the Applicant and their advocate demonstrated inexcusable laxity in prosecuting this case, and not only on the material date but others. It is the role of the Plaintiff and his counsel to ensure that the case proceeds for hearing expeditiously. In the case of *Utalii Transport Co. Ltd and 3 Others vs N.I.C. Bank and Another* (2014) eKLR, the court held that;

It is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court.”

8. It is also the duty of the parties to assist the court to adjudicate on the matters brought before it expeditiously as was held in *Gideon Sitelu Konchella vs Daima Bank Limited* (2013) eKLR where the court while citing the case of *Mobil Kitale Service Limited vs Mobil Oil Kenya Limited*, held that:-

It is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice by delay would be a thing of the past. Justice would be better served if we dispose of matters expeditiously ....the overriding objection of this Act and Rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.”

9. The Plaintiff/Applicant blames his advocate for the inadvertent mistake. This is the Plaintiff’s case and they ought to have been vigilant. The case does not belong to the advocate. In the case of *Savings and Loans Limited vs Susan Wanjiru Muritu Nairobi HCCC 397/2002*, the court stated that;

Whereas it would constitute a valid excuse for the defendant to claim that she had been let down by her former advocates failure to attend court on the date the application was fixed for hearing, it is trite that a case belongs to a litigant and not to her advocate. A litigant has a duty to pursue the prosecution of his or her case.

10. The court cannot set aside dismissal of a suit on the sole ground of a mistake by counsel of the litigant on account of such advocate’s failure to attend court. It is the duty of the litigant to constantly check with her advocate the progress of her case.

11. I am minded that dismissal of cases upon summary procedure may be draconian but when the occasion calls for such action, the court should not shy away from taking such measures (see the case of *Kenya Power & Lightning Co. Ltd vs Alliance Media Kenya Ltd* (2014) eKLR). The Plaintiff is indolent and this is inexcusable. Suits are meant to be prosecuted. From the facts before me, the law and authorities cited above I find that the application is unmerited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

**N.A. MATHEKA**



**JUDGE**

