



**Jyantilal v Halane Construction Company Limited & another (Environment & Land Case 198 of 2015) [2024] KEELC 7558 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7558 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 198 OF 2015  
FM NJOROGE, J  
NOVEMBER 14, 2024**

**BETWEEN**

**NARESH JAYANTILAL ..... PLAINTIFF**

**AND**

**HALANE CONSTRUCTION COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MOHAMED RASHID ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff's application dated 9<sup>th</sup> October, 2024 is brought under Order 10 Rule 11 of the [Civil Procedure Rules](#) and it seeks the following orders:
  1. ....Spent;
  2. That this Honourable Court be pleased to set aside the order of dismissal of the suit issued on the 7<sup>th</sup> October, 2024;
  3. That costs be in the cause.
2. The application is supported by the grounds on the face of the application and the supporting affidavit sworn by Fred Adhoch on even date. He deponed that on 7/10/2024 he logged into the link provided for Environment and Land Court No. 2 at 8: 45am. That at about 9:15 a.m. he realized that he had not been let into the platform and he requested his assistant to inquire whether the court would be sitting and what time the court would start.
3. He also deponed that upon inquiry, he was informed that the court session would begin at 9:45 a.m.; that as at 9:45 a.m., he was still not let into the platform. He further asserted that he continued to wait at the lobby until 10:15 a.m., and when he communicated with his contact at Malindi Court, one Victor Odhiambo to physically check whether the court was sitting, he was informed that the matter had been dealt with and dismissed for want of prosecution.



4. It was his contention that he had all along been waiting at the lobby to be let in and in view of the circumstances stated, the order of dismissal for attendance was irregularly done and that the failure to attend court virtually was not intentional but occasioned by the facts stated above.
5. The directions of this court of the 15<sup>th</sup> October, 2024 were to the effect that the applicant do canvass the application by way of written submissions. I note that submissions in support of the said application have not been filed as directed.

**Disposition.**

6. I have considered the application dated 9/10/2014 and in my view, what this court is being called to determine is whether the applicant has tendered a reasonable explanation for his failure to attend court on the date the suit was dismissed and whether this court ought to exercise its discretion to set aside the order of 7/10/2024.
7. Having considered the reasons advanced by the Plaintiff/applicant, I am persuaded that they are form sufficient ground upon which to grant the instant application. I have also considered the explanation of the Applicant and am persuaded that the non-attendance by counsel for the plaintiff on the material day was not deliberate or calculated to obstruct or delay the cause of justice.
8. It has equally not been demonstrated to this Court how if any the defendant would suffer any serious prejudice or miscarriage of justice if the interested Applicant's application is allowed.
9. In the end I find that the application is merited and it is hereby allowed as prayed in prayer no thereof. The costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

