



**Milimani Beach Resort Limited v Equity Bank Limited (Civil Case E016 of 2025) [2025] KEHC 11280 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11280 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL CASE E016 OF 2025  
A MABEYA, J  
JULY 31, 2025**

**BETWEEN**

**MILIMANI BEACH RESORT LIMITED ..... PLAINTIFF**

**AND**

**EQUITY BANK LIMITED ..... DEFENDANT**

**RULING**

1. On 20/6/2025, the applicant lodged a Motion dated 19/6/2025 seeking injunctive orders against the respondent. The same was ordered to be served for hearing inter-partes on 30/6/2025.
2. On 30/6/2025, there was no appearance for the applicant but Mr. Odongo Learned Counsel for the respondent appeared and was ready to proceed. He applied for the application to be dismissed for non-attendance. The Court heeded the call and dismissed the same as there were no reasons to be recorded under Order 12 Rule 3 of the Civil Procedure Rules. The Court and directed the parties to appear before the Deputy Registrar on 16/7/2025 for pre-trials.
3. On 11/7/2025, the applicant once again lodged a Motion dated 10/6/2025 (sic) (should be 10/7/2025) seeking that the dismissed Motion be reinstated for hearing on merit. It also applied for an injunctive order the meantime. The Motion was brought under sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 12 Rule 7 of the Civil Procedure Rules.
4. The application was made on the basis that the applicant's advocates had internet challenges on the material day. That is why he was unable to join the Court. That failure to attend was not deliberate. That the application had been brought timeously. The application was opposed.
5. I have considered the record and the contestations of the parties. This is an application for setting aside an order made ex-parte. The principles applicable are well known. The Court will consider the reasons advanced for the non-attendance, the delay if any in making the application and the prejudice, if any,



to be suffered by the opposite party. Above all, it is a matter of the discretion of the Court. See CMC Holdings Ltd –vs- Nzioki [2004] KLR 173.

6. In Wachira Karani –vs- Bildad Wachira [2010] eKLR it was held: -

“The fundamental duty of the Court is to do justice between the parties. It is in turn, fundamental that to that duty, those parties should each be allowed a proper opportunity to put their cases upon the merits of the matter...”

7. In the present case, there was no delay in making the present application. It was made within 10 days of the dismissal order.

8. As regards the reasons for non-attendance, it was argued that the applicant’s advocates encountered internet failure as a result of which he was unable to join the day’s proceedings. It is common ground that nowadays court proceedings are undertaken virtually. It is therefore the responsibility of each party, as well as the legal advisors to invest in stable and reliable connectivity facilities. However, technology being what it is, is susceptible to failure. The Court will excuse the applicant.

9. As regards the prejudice to be suffered by the other side, it is only the delay of the matter. Costs can compensate it.

10. Accordingly, I find that the application dated 10/7/2025 is meritorious and I allow the same in terms of prayer No. 3 thereof. The dismissed Motion is reinstated for hearing and determination.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

