



REPUBLIC OF KENYA



KENYA LAW
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**Imathiu (Suing as the trustee of Kenya Young Men's Christian Association)
v Mukasi & 11 others (Environment and Land Miscellaneous Application
E048 of 2022) [2023] KEELC 16678 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16678 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E048 OF 2022
FM NJOROGE, J
MARCH 30, 2023

BETWEEN

**BISHOP LAWI IMATHIU (SUING AS THE TRUSTEE OF KENYA YOUNG
MEN'S CHRISTIAN ASSOCIATION APPLICANT**

AND

BERNARD MUKASI 1ST RESPONDENT
JOSEPH MUTUNE WAMBUA 2ND RESPONDENT
RICHARD MWANGI 3RD RESPONDENT
DANIEL KIMUYA 4TH RESPONDENT
TERESIA WANJIRU 5TH RESPONDENT
NDERITU WANJIRU 6TH RESPONDENT
DANIEL NJUGUNA 7TH RESPONDENT
RICHARD MACHARIA MWANGI 8TH RESPONDENT
PETER MUTUA MUTUNGA 9TH RESPONDENT
SAMUEL GATHII 10TH RESPONDENT
GEORGE OTGIENO 11TH RESPONDENT
CHARLES AGWADA 12TH RESPONDENT



RULING

1. This ruling is in respect of the applicant's notice of motion application dated February 23, 2023 brought under order 24 rule 3(1)(2) and 7(2) of the Civil Procedure Rules, article 159 2(d) of the Constitution of Kenya and sections 1A, 1B and 3A of the Civil Procedure Act which sought the following orders:
 - a. Spent
 - b. That the honorable court be pleased to set aside its orders given on the December 8, 2022 dismissing the applicant's application dated November 29, 2022.
 - c. That the honorable court be pleased to reinstate the applicant's application dated November 29, 2022.
 - d. That the costs of this application be provided for.
2. The application is supported by the supporting affidavit of Hesbon Owino Opiyo counsel for the applicant sworn on February 23, 2023. The grounds on the face of the application and the supporting affidavit are that the applicant had filed the application dated November 29, 2022 where he sought the transfer of Naivasha CM ELC case No E002 of 2022, Registered Trustee of the Young Men's Christian Association in Kenya v Richard Mwangi & 3 others to be consolidated with ELC case No 141 of 2014 between Bishop Lawi Imathu v Joseph Mutune Wambua & 11 others since both cases involve the same subject matter; that the said application was fixed for inter-partes hearing on December 8, 2022 when it was dismissed for non-attendance by counsel for the applicant; that counsel for the applicant was not aware that the matter had been fixed for hearing December 8, 2022; that the mistake of counsel to attend court should not be visited upon the innocent applicant and that the present application has been brought without unreasonable delay.
3. No response to the application was filed by the respondents.

Submissions

4. The applicant filed his submissions dated March 13, 2023 on March 15, 2023 while the respondents did not file any submissions.
5. The applicant in his submissions relied on the cases of Wanjiku Kamau v Tabitha Kamau & 3 others [2014] eKLR, Lochab Bros Ltd v Peter Karuma T/A Lumumba Lumumba Advocates [2003] eKLR, Esther Wamaita Njibia & 2 others v Safaricom Limited [2014] eKLR and submitted that mistake of counsel should not be visited on an innocent client and sought that his application be allowed as prayed.

Analysis and Determination

6. After considering the application and the submissions, the only issue that arises for determination is whether the court should set aside its orders given on January 17, 2023 dismissing the applicant's application dated November 29, 2022 and reinstate the same. The record shows that the applicant's application dated November 29, 2022 was dismissed on January 17, 2023 and not on December 8, 2022 as indicated by the applicant.



7. The grounds upon which the applicant is seeking for the court to set aside its orders given on January 17, 2023 dismissing his application dated November 29, 2022 are that his counsel was not aware of the said date and that his counsel's mistake should not be visited upon him.
8. A perusal of the court record indicates that the application dated November 29, 2022 first came up for hearing on 1/12/2022 when the court gave it an inter-partes hearing date on December 8, 2022. On December 8, 2022, neither of the parties were present in court and so a mention date was given for January 17, 2023 and the Deputy Registrar was directed to issue a notice for the said date. On January 17, 2023 neither of the parties were present in court and so the application dated November 29, 2022 was dismissed for non-attendance.
9. A further perusal of the court record indicates that there is nothing to show that the applicant's counsel was served with the mention notice for January 17, 2023.
10. It is my view that the applicant has demonstrated sufficient reason for the court to review its orders issued on January 17, 2023 which dismissed the application dated November 29, 2022 as there is no evidence that the applicant was served with the mention notice for January 17, 2023 and the applicant's counsel's plea is that he was not aware that the matter was scheduled for hearing of the application on that date. Of course there are other means by which he could have found out the hearing date, but this court having ordered service and service not having been shown to have been effected on him, he must be given the benefit of doubt, and the applicant's application must therefore succeed. The applicant's application dated November 29, 2022 is hereby reinstated for hearing and determination on its merits and it shall be mentioned on April 26, 2023 for further directions.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 30TH DAY OF MARCH 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

