

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 614 OF 2004

PRAXIDES WEKESA.....PLAINTIFF

VERSUS

DONALD B. KIPKORIR

T/A KIPKORIR, TITOO & KIARA

ADVOCATES.....DEFENDANT

RULING

The plaintiff's suit was dismissed on 15th February, 2019 for want of prosecution under Order 17 Rule 2 of the Civil Procedure Rules. There is now an application before me by way of Notice of Motion under Section 3A and Order 50 Rule 15 of the Civil Procedure Rules, for orders that the dismissal order be set aside and or reviewed. It is the plaintiff's case that the absence and or none attendance by the advocate on the date the suit was dismissed was not deliberate but caused by sufficient cause and in any case, the applicant is ready to pursue the case to its logical conclusion.

The application is opposed and grounds of opposition have been filed on behalf of the defendant. Both parties have also addressed the court on the application. I have perused the record of this case from the time the suit was filed. Both parties have variously caused the delay in the prosecution and determination of this suit.

The supporting affidavit sworn by the advocate for the plaintiff has owned up to the mistake attributed to the clerk in the office, who failed to diarize the date when the suit was listed for notice to show cause. I consider that an honest mistake which should not be visited upon the plaintiff.

As at the time the dismissal order was made, it was one year and 5 months from the last time the case was in court, that is 28th September, 2017. It is true that this is an old case, but being the first time in which the court has exercised its power under the cited rules to dismiss the suit, the plaintiff should be given an opportunity to prosecute the case.

I am inclined to allow the application which I hereby do and order that the dismissal order made on 15th February, 2019 be and is hereby set aside. The suit is accordingly reinstated. The plaintiff shall endeavour to prosecute this suit within the next 120 days from the date of this ruling. The costs shall be in the cause.

Dated, signed and delivered at Nairobi this 29th Day of July, 2019.

A.MBOGHOLI MSAGHA

JUDGE