



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 37 OF 2014

JOSEPHAT GATIBA MBUGUA PLAINTIFF

VERSUS

BANK OF BARODA (KENYA) LIMITED.....DEFENDANT

RULING

1. This suit was dismissed for want of prosecution on 3rd October 2018. **Josephat Gatiba Mbugua**, the Plaintiff did not attend Court on that date. Before that dismissal this suit had last been before Court on 19th December 2017. On that date the Court fixed this matter for mention on 5th February 2018 but the same was not listed for mention on that date.

2. The Plaintiff seeks the setting aside of the dismissal of this suit for want of prosecution. That order is sought under Notice of Motion application dated 27th February 2019. Although **Bank of Baroda (Kenya) Limited**, the Defendant, was served with that application the same was not opposed by the Defendant.

3. The Plaintiff application is premised on the grounds that the Plaintiff's previous firm of Advocates failed to keep him informed of the status of this case, that the said Advocate's failure to attend Court on 3rd October 2018, to show cause, should not be visited on the Plaintiff; and that it was erroneous to dismiss the suit for want of prosecution when it had not been one year from the date of the last action in the matter, as provided under Order 17 Rule 2 of the Civil Procedure rules.

4. As stated before the Defendant did oppose the application. The Plaintiff's submissions therefore went unopposed. The Plaintiff's main argument was that the Notice to Show Cause was not served by the Court. I have perused the Notice to Show Cause, issued by the Court dated 20th September 2018 and I cannot find any evidence of service of that notice, either on the Plaintiff or the Defendant. It follows that the Plaintiff, when this suit was dismissed for want of prosecution, was condemned unheard. In that regard it is in the interest of justice that this suit be reinstated.

5. I have also noted that this is a case whose jurisdiction falls within the pecuniary jurisdiction of the Chief Magistrate. This case therefore will be transferred, for trial, before the Chief Magistrate Court.

6. The orders of the Court are:

- a. **The dismissal of this suit of 3rd October 2018 is hereby set aside and this suit is hereby reinstated.**
- b. **The costs of the Notice of Motion dated 27th February 2019 shall be in the cause.**
- c. **This suit shall at the reading of this Ruling be transferred to the Chief Magistrate's Court Milimani.**

DATED, SIGNED and DELIVERED at NAIROBI this 24TH day of JULY, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE DEFENDANT