



REPUBLIC OF KENYA



**Njuguna v Njuguna & 4 others (Environment & Land Case 26 of 2020)
[2023] KEELC 22010 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22010 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 26 OF 2020**

**JE OMANGE, J
NOVEMBER 23, 2023**

BETWEEN

SAMUEL KIHU NJUGUNA PLAINTIFF

AND

MOSES NJUGUNA 1ST DEFENDANT

ISAIAH GIKONYO NYAMBURA 2ND DEFENDANT

JANE WAMBUI 3RD DEFENDANT

IBRAHIM HAJI 4TH DEFENDANT

**JAMES K KANIU (BEING SUED AS THE DIRECTOR OF KARAGITA (EA)
LTD) 5TH DEFENDANT**

RULING

1. *Vide* Notice of Motion application dated 8th January, 2023 the Applicant seeks the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to reinstate the Plaintiff's suit pending the hearing of this application interpartes.
 3. That this Honourable Court be pleased to set aside its orders dismissing the Plaintiff's suit herein for want of prosecution on such terms as may be just.
 4. That the Applicant be granted leave to amend his plaint.
 5. That the costs be in the cause.



2. The application was supported by an affidavit sworn by Samwel Kahiu Njuguna in which he deposes that the plaint was filed on 12th February, 2020. He avers that the matter was not set down for hearing nor was his advocate served with a notice to show cause.
3. The application was opposed by the 1st, 2nd and 4th Respondents who filed grounds of opposition and a Replying Affidavit. The Respondents argued that the Plaintiff had not given sufficient reasons for failing to set the matter for hearing or for failing to attend the hearing of the Notice to Show Cause.
4. Both counsels filed submissions which the court has duly considered. The only issue for the courts determination is whether there are good grounds for this court to set aside the order dismissing the suit and to reinstate the suit.
5. It is the Defendants case that the Plaintiff herein has never shown interest in the case and has not attended the hearing of the case. Indeed, the record show that the Plaintiff did not attend court the four times the matter came up for hearing. I would have readily agreed with the Defendant that given the conduct of the Plaintiff this is not a matter where the court should exercise discretion in favour of the Plaintiff.
6. However, I note that the application by the Plaintiff is hinged solely on the allegation that he was not served with the Notice to show cause why the suit should not be dismissed. While parties should be vigilant and not expect the court to pursue their cases, the right to be heard is sacrosanct. It should only be taken away in very rare circumstances. In this case, I was unable to decipher from the court file, an affidavit of service which confirms that the Plaintiffs advocate was served.
7. For this reason, I find that on this ground, there is sufficient reason to exercise discretion in favour of the Plaintiff to allow him to be heard. As such the application is allowed in the following terms;
 - a. The order dismissing the suit on 19th July, 2021 is hereby set aside and the suit reinstated subject to the following conditions.
 - b. That the plaintiff is to comply with timelines agreed upon for hearing of the case.
 - c. That the plaintiff is to pay thrown away costs of Kshs 20,000 to the Defendant within 30 days.
 - d. In default of compliance with (b) and (c) above the order reinstating the suit is to lapse and the suit is to stand dismissed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF NOVEMBER 2023.

JUDY OMANGE

JUDGE

In the presence of:-

Mr. Muriithi for Kingori for 1st, 2nd and 4th Defendants

Steve - Court Assistant

