



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CIVIL SUIT NO. 60 OF 2010

MBWELE MUOKI 1ST PLAINTIFF/RESPONDENT

DENNIS MUOKI 2ND PLAINTIFF/RESPONDENT

VERSUS

JUSTUS MUTIE KIOKO DEFENDANT/APPLICANT

RULING

1. In his Application dated 9th March, 2017, the Defendant is seeking for the following orders:

a. That the order of this Honourable Court made on 9th March, 2017 dismissing the Application dated 7th March, 2017 be set aside.

b. That the order setting the matter down for Judgment of 9th June, 2017 be set aside.

c. That the costs of this Application be in the cause.

2. The Application is premised on the grounds that the Defendant filed an Application dated 7th March, 2017 seeking to set aside the orders of this court of 26th January, 2017 closing the Defence case; that he had transport challenges and that is why he arrived in court late and that it is imperative that his Application of 7th March, 2017 be heard before the matter can proceed for Judgment.

3. The Respondent's advocate filed Grounds of Opposition in which he averred that the Application is frivolous, vexatious and without merit; that the orders being sought in the current Application are similar to those that were sought in the Application that was dismissed on 9th March, 2017 and that the Application is *Res-judicata*.

4. The Plaintiff's counsel and the Defendant appeared before me and made oral submissions which I have considered.

5. When this matter came up for hearing on 26th January, 2017, the Defendant's counsel applied for adjournment on the ground that she had not been in touch with the Defendant.

6. The court declined to adjourn the matter and the Plaintiff testified.

7. Indeed, after the Plaintiff testified, the Defendant's counsel once again sought for an adjournment on the basis that she could not take a date for Defence hearing for want of instructions. That Application was

also rejected by the court. The court granted to the Defendant leave to appeal against its Ruling(s).

8. The Defendant subsequently filed a Notice to act in person and filed an Application dated 7th March, 2017. In the Application, the Defendant sought for an order to set aside the orders of this court made on 26th January, 2017.

9. The Application was certified as urgent by this court and the same was fixed for hearing on 9th March, 2017.

10. When the Application came up for hearing on 9th March, 2017, the Defendant was not in court and the Application was dismissed for want of prosecution.

11. In the current Application, the Defendant has deponed that he was not in court on 9th March, 2017 “*due to a transport challenge*” and arrived after the matter had been called out.

12. Obviously, and in view of the record, the Defendant seems to be a person who does not take the business of the court with the seriousness it deserves.

13. I say so because the matter proceeded in his absence on 26th January, 2017 because he had not given his advocate instructions.

14. When the court gave him an opportunity to ventilate his Application of 7th March, 2017, he was once more not in court.

15. As was held in the case of ***Ketterman vs. Hansel Properties Limited (1988) 4 ALL ER 769***, “*legal business should be conducted efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigants as was perhaps possible in a more leisured age. There will be cases in which justice will be better served by allowing consequences of the negligence of lawyers [and litigants] fall on their heads.*”

16. Considering that no good reasons have been given by the Defendant as to why he was not in court on 9th March, 2017, I dismiss the Application dated 9th March, 2017 with costs.

DATED AND DELIVERED AT MACHAKOS THIS 24TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE