



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL CASE NO. 138 OF 2000

EMMY JEROBON BETT.....PLAINTIFF

VERSUS

RAEL CHEROP MARITIM.....1ST DEFENDANT

V.K. SAINA.....2ND DEFENDANT

POST BANK CREDIT LIMITED (IN LIQUIDATION).....3RD DEFENDANT

RULING

This matter comes up now before the court for the application by the plaintiff dated 14th December, 2015. The same by way of Notice of Motion, principally seeks that the orders made by the court on 8th June, 2015 dismissing the plaintiff's suit be reviewed, and set aside and that this suit be reinstated for hearing on priority basis. The application has been opposed by the Defendant/ Respondent.

In his submissions, Mr. Sifuna for the applicant, submitted that the dismissal was during the Justice at last initiative and was done without issuance of Notice to Show Cause as required under O17(Rule (2)(1)). That the case having been filed in 2000, the plaintiff has sought for justice for 17 years. That the plaintiff has attached several letters confirming that the court file had been missing.

And in opposing the application, Mr. Kiboi for the Respondent, submitted that this case was properly dismissed since the plaintiff failed to act as directed by the court. Counsel then submitted that under the Justice at Last notices were issued and posted on Notice boards and did not require physical service. And that for this case notice was put on the notice board and the plaintiff ought to have come to court to show cause. Finally, that any continued delay in this matter would cause the subject matter herein (tractor) to be wasted.

The 3rd defendant also opposed the application.

I have considered the submissions of the 3 learned counsel. I have also carefully perused and considered the pleadings filed herein both in support and in opposing this application. This application seeks to have the orders of the court made on 8th June, 2015 set aside and the suit re-instated for hearing. The circumstances leading to the orders of dismissal are fairly agreed by the parties. That the dismissal was done during the Justice At Last Initiative. That for this initiative, no personal service of notices were effected on the parties. But rather written notices were placed on notice boards of courts throughout the county.

I have considered the signed order dated 8th July, 2015. Same confirms that the dismissal order was pursuant to O17 Rule (2)(1) of the Civil Procedure Rules. The said Rule states:

“In any suit in which no application has been made or step taken by either party for 1 year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed and if cause is not shown to its satisfaction, may dismiss the suit”.

My interpretation of the above provision is that notice in writing must be served on the concerned parties before an order of dismissal may ensue under the above Rule. In this particular case, it is conceded that such notice was only placed on the notice board at the court. There is no evidence on record to suggest that the Plaintiff got this notice or became aware of the same as to appear in court to show cause. It is for this reason that I am persuaded by the submissions of the learned counsel for the plaintiff that it is fair and in the interest of justice to set aside the said orders aggrieved of and to reinstate this case for hearing. I accordingly therefore allow the plaintiff’s application dated 14th December, 2015 in terms of prayer (5) of the same. In view of the age of this case, I also order that this case be fixed for hearing on priority basis. Each party to bear own costs of this application.

DATED, SIGNED and DELIVERED at ELDORET, this 28th day of June, 2017.

D.O. OGEMBO

JUDGE

Ruling read out in open court in presence of: -

1. Ms. Nasiloli for 2nd Respondent and h/b for Ms. Tigo for 1st Respondent.
2. Mr. Sifuna is absent

D.O. OGEMBO

JUDGE