



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 778 OF 2016**

**MONICA AUMA ODENY .....PLAINTIFF/ RESPONDENT**

**(Suing as legal administer of the estate of her late husband MICAH ODHIAMBO MBANI)**

**VERSUS**

**ABDIRIZAK HILLOW IBRAHIM...1<sup>ST</sup>DEFENDANT/ RESPONDENT**

**ABDI HASSAN ALI.....2<sup>ND</sup> DEFENDANT/ RESPONDENT**

**MANAGING TRUSTEES NATIONAL**

**SOCIAL SECURITY FUND.....3<sup>RD</sup> DEFENDANT/ RESPONDENT**

**RULING**

1. Before me is a Notice of Motion Application dated 23.6.2021 in which applicant seeks orders to set aside or vary the orders of 14.6.2021 in which the Applicants' application dated 18.1.2021 was dismissed.

2. The grounds in support of the application are that:

*1) The Plaintiff/Applicant's advocate had filed an application dated January 18th 2021 seeking to have Case Number ELC. 778 reinstated.*

*2) The said Application was listed for hearing on June 14,2021 before Justice Eboso, and was Number 5 in the Course List.*

*3) That Plaintiff/Applicant's Advocate signed in ZOOM at about 9am using "Microsoft Notebook" Laptop in readiness to conduct the hearing and zoom indicated that "WE HAVE NOTIFIED THE MEETING THAT YOU ARE WAITING"*

*4) The honourable Judge called out the course list, and when he reached No. 5. he noticed that the application was missing from the file prompting the honourable judge to place the file aside to be mentioned at 11.30am.*

*5) The Plaintiff/Applicant's Advocate did not log out nor sign out of ZOOM while waiting for 11.30am for the file to be mentioned.*

*6) At about 11.20 a message appeared on the screen asking to mute the system and the system automatically muted and went blank.*

*7) Then few minutes later, the Applicant's counsel got information that the Application had been dismissed.*

3. The 1st Defendant has opposed the application vide his replying affidavit dated 7.12.2021, averring that the Plaintiff has not given any explanation as to why they failed to turn up in court on 14.6.2021 to prosecute her application, that there was no problem with technology on that date and that there was delay in filing the current application.

4. I have weighted all the issues raised herein. I find that as the issue at hand relates to the proceedings of 14.6.2021, if the court was to consider other issues, it would in essence entail delving into the issues raised in the dismissed application.

5. This court has perused the proceedings of 14.6.2021, there is nothing to indicated that the file was being set aside for a while. It was a

virtual court. Nevertheless, the current application was filed promptly after the orders of 14.6.2021. I give the Applicant the benefit of doubt. The orders of 14.6.2021 are varied such that the application dated 18.1.2021 is reinstated but the same shall still be heard virtually. Each party to bear their own costs of the application dated 23.6.2021.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Apolo holding brief for Mr. Abony for the Plaintiff/Applicant

Ondaba for the 2nd Defendant/Respondent

Ashitiba for 3rd Defenant/Respondent

Court Assistant: Eddel Barasa