



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 130 OF 2008**

**SAMUEL ODONGO MUKHWANA ..... PLAINTIFF**

**VERSUS**

**GLOBAL ALLIED INDUSTRIES LIMITED..... 1<sup>ST</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL .....2<sup>ND</sup> DEFENDANT**

**RULING**

On 27<sup>th</sup> February, 2015 Onyancha J dismissed this suit under Order 17 Rule 2 (1) of the Civil Procedure Rules. The plaintiff has now moved the court by way of Notice of Motion dated 3<sup>rd</sup> December, 2015 under Sections 1A, 1B and 3A of the Civil Procedure Act. Order 17 Rule 2 and Order 45 Rule 1 of the Civil Procedure Rules to review or set aside the said order and reinstate the suit to hearing. The reasons advanced are that the dismissal order was mistaken, the advocates on record were not served with the notice to show cause and the parties are desirous to conclude the matter through the court process.

Further, the plaintiffs advocate has unsuccessfully sought to list the case for hearing or mention. There is a supporting affidavit sworn by the advocate for the plaintiff applicant. The application is opposed and there are grounds of opposition filed by the defendants' counsel who states that the court is *functus officio* and incapable of granting the orders sought by the applicant. Further, the requirements necessary for granting review orders have not been met.

It is also stated that the applicant is guilty of inordinate delay. Both counsel have filed submissions which I have noted. As at the time the dismissal order was made, the suit had remained inactive for a period of two years. The last entry was by Waweru J on 23<sup>rd</sup> January, 2013 where the suit was certified ready and could be listed for hearing.

Going by the provisions of law cited, it is always the intention of the court to sustain the suit rather than dismissing it. Both counsel did not appear when the suit was dismissed. A notice had been posted on the judiciary website but there is no guarantee that the applicant read or had access thereto. The defendant has not shown what prejudice, if any, would be suffered if the dismissal order is set aside and the suit reinstated.

I am inclined to exercise the court's discretion by setting aside the dismissal order which I hereby do. The suit is now reinstated and the parties may now take a hearing date as ordered by Waweru J aforesaid. The costs shall be in the cause.

***Dated, signed and delivered at Nairobi this 8<sup>th</sup> Day of June, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**