

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 11 OF 2014

SULEIMAN KASSIM MUMO.....PLAINTIFF/APPLICANT

VERSUS

ABDULKADIR HUSSEIN KADERDINA.....DEFENDANT/RESPONDENT

RULING

The application is dated 24th July 2019 and is brought under Sections 1A, 1B (a) and 3A of the Civil Procedure Act 3A of the Civil Procedure Act, Order 10 rule 11 Order 12 Rule 7 and Order 51 rule 1 of the CPR Cap 21 laws of Kenya seeking the following orders;

1. The Court be pleased to reinstate this suit which was dismissed 16th of October 2017.
2. Costs be in the cause.

It is based on the grounds that the suit was set for a notice to show cause why it should not be dismissal for want of prosecution on the 16th of October 2017. That the Applicant did receive a formal notification from the court indicating that this suit will be dismissed if there is no sufficient reasons why it should not via registered mail. The reason he did not receive the communication was because the address used does not belong to him but to a human rights organization, personally he does not have a postal address. The other reason why this matter had not been fixed for hearing by himself was because this file had gone missing and he was unable to get it to fix a hearing date. That it is on 19th June 2019 that he realized that this matter had long be dismissed the court record indicates that both parties were present in court when the suit was being dismissed. The court record will show that he has all along been keen in prosecuting this matter. It is only fair that the application sought herein be allowed.

The Respondent stated that the Application is frivolous and devoid of merit and ought to be dismissed with costs. That the Plaintiff did not show cause why his suit should not be dismissed for want of prosecution. That the Plaintiff is guilty of inordinate, unexplained, unreasonable and inexcusable delay in filing the Application. Whereas the Plaintiff's suit was dismissed for want of prosecution on 16th October, 2017 the Plaintiff filed the Application to reinstate the suit very late after a lapse of a period of one year and nine months. That the Plaintiff received the Notice to Show Cause why his suit should not be dismissed for want of prosecution but the Plaintiff neither attended court nor showed cause why the suit should not be dismissed. That the Plaintiff is a vexatious litigant and the application is an abuse of the court process. That the Plaintiff had filed another suit in the year 2002 being Case No. 404 of 2002 over the same subject matter of this suit. The suit that the Plaintiff is now seeking to reinstate, that is, Case No. 11 of 2014, is sub-judice Case No. 404 of 2002. Annexed hereto and mark "KI" are the Pleadings in Case No. 404 of 2002. That reinstatement of the Plaintiff's suit will not serve any meaningful purpose but will be a waste of precious judicial time. The Plaintiff should file a fresh suit against the correct persons who own Property Number 4885 (Original Number 4600/1) Section II Mainland North. That he prays that the Plaintiff's Notice Motion application dated 24th July, 2019 be dismissed with costs.

This court has considered the application. The Applicant stated that the reason he did not receive the communication when the matter was fixed for dismissal was because the address used does not belong to him but to a human rights organization, personally he does not have a postal address. The other reason why this matter had not been fixed for hearing by himself was because this file had gone missing and he was unable to get it to fix a hearing date. That it is on 19th June 2019 that he realized that this matter had long be dismissed. I have perused the court file and find that the matter was dismissed for want of prosecution on the 16th October 2017. It was not until 31st July 2019 when this application was filed. This is an old matter of 2014. Reasons advanced why this application should be granted are unacceptable.

In the case of Utalii Transport Company Ltd & 3 Others vs NIC Bank & Another (2014) eKLR, the court held that it is the primary duty of the Plaintiffs to take steps to progress their case since they are the ones who dragged the Defendant to court. The decision on whether the suit should be reinstated for trial is a matter of justice and it depends on the facts of the case. In Ivita vs Kyumbu (1984) KLR 441, Chesoni J (as he then was), stated that the test is whether the delay is prolonged and inexcusable and if justice will be done despite the delay. Justice is justice for both the Plaintiff and the Defendant. I find this application has no merit and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF FEBRUARY 2022.

N.A. MATHEKA

JUDGE