



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 103 OF 1998

LAWRENCE KINYUA MWAIAPPLICANT/PLAINTIFF

Versus

NYARIGINU FARMERS CO. LTD.....1ST RESPONDENT/DEFENDANT

FLORENCE WAIRIMU MUITA.....2ND RESPONDENT/DEFENDANT

RULING

Reinstatement of suit

[1] This suit was dismissed by court on 6th July 2015. The Plaintiff was aggrieved by the dismissal and has applied now for the order of dismissal to be set aside and the suit to be reinstated for hearing on merit. His application is dated 20th July 2015 and is supported by three (3) major arguments, that:

- a) He was served with the notice to show cause through Nanyuki Law Courts on 14th July 2015 after the date for hearing the Notice to show cause had expired;**
- b) That he brought this lapse to the attention of the Nanyuki Law Court who called the executive officer, Meru High Court on the matter; and**
- c) That in the circumstances the dismissal was unjust and should be set aside.**

[2] The Notice for the hearing of the application scheduled for 2nd November, 2015 was served on Ndorongo and Co. Advocates for the respondents; but they neither filed any opposition to the application nor attended court on 2nd November, 2015. I have perused the court record and especially proceedings for 6th July, 2015. I only see the original notice in the file but with no return of service. I also see a photo copy of the notice which is annexed to the application herein as LKM1. On that annexure I can discern remarks “served on 14/7/15 Githu received on6/7/15”. I have not seen any evidence that the Notice to Show Cause under Order 17 rule 2 of the Civil Procedure Rules was given to the plaintiff as required by the said Rule. But, there is every indication that the Notice to show cause was transmitted to or served upon the Applicant after the date for its hearing had already passed. That kind of service cannot be said

to be have given Notice to the Applicant of the impending dismissal of his suit. Therefore, there is a glaring omission or irregularity on our part as a court of law which renders the order of dismissal of suit a candidate for setting aside *ex debito justitiae*. Accordingly, I set aside the order dismissing this suit on 6th July, 2015. The suit is thus resurrected. However, after perusal of the file, I should not leave the Applicant off the hook as fast as this is an old matter which should have left the shelves for active files to the archives if indeed the plaintiff was a diligent and keen litigant. I will, therefore, direct that the Applicant is now under notice under Order 17 rule 2 of the Civil Procedure Rules to appear before this court on the 2nd day of February, 2016 and show cause why this suit should not be dismissed for want of prosecution. The delay in prosecuting this case calls for satisfactory account by the Applicant. He shall file an affidavit to that effect and serve it within seven (7) days from today. That is the reason why I have not evaluated all the other explanations that have been offered in this case by the Applicant as they need to be properly evaluated in light of a proper notice to show cause. It is so ordered.

Dated, signed and delivered in open court at Meru this 24th day of November, 2015.

F. GIKONYO

JUDGE

In the presence of:

Plaintiff – present

F. GIKONYO

JUDGE