



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 216 OF 2013**

**ELIJAH OMOLO OKEYO.....PLAINTIFF**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....DEFENDANT**

**RULING**

The Defendant has come to court for orders that this Honourable Court be pleased to set aside, review and or vary the orders made on the 31/05/2018 dismissing the Defendants' counter claim herein. This Honourable Court be pleased to reinstate the Defendants' counterclaim and the same be fixed for hearing and that costs of this application be in the cause. The application is based on grounds that the plaintiff's suit was dismissed for want of prosecution on the 31<sup>st</sup> of May 2018. The Applicant's advocate learned that on the said 31/05/2018 the entire suit dismissed upon perusal of the court file on the 17<sup>th</sup> of April 2019.

It is stated that the Counsel holding brief for the Defendant/Applicant on the 31/05/2018 forgot to notify the court of the Defendants counterclaim seeking eviction orders against the plaintiff. The Defendant/Applicant prays for an order reinstating the Defendants counter claim dated 1<sup>st</sup> December 2015 and thereafter the same be set down for hearing and final determination. It is in the interest of justice that this Honourable Court does reinstate the defendants' counterclaim herein and the same be determined on its merit. The Applicants stand to suffer irreparably and will be prejudiced in the event that the prayers sought are not granted. In fact, the Plaintiff/Respondent has interfered with rail transport services in violation of the defendant Corporation's right to user of land. The Respondent will not be prejudiced in any way if the orders sought herein are granted.

The reasons given for review and reinstating of counter-claim by M/s Moraa learned counsel for the applicant are that the entire suit was dismissed including the counter claim. That the counsel for the defendant holding brief for Mr. Mutei forgot to inform the court that there was a counter-claim seeking to revoke the title in respect of the property. M/s Mathairo for the respondent argues that the applicant has failed to give a reason for the delay in making the application for the reinstatement of the suit.

I have considered the application and do find that this matter is of public interest as it is alleged that the suit property is public land and therefore the public should not suffer for the mistake of the advocate. I do allow the application and do direct that the counter claim be heard on priority basis.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 23<sup>rd</sup> DAY OF MARCH, 2022**

**ANTONY OMBWAYO**

**JUDGE**

*This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*