



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**JUDICIAL REVIEW CASE NO. 823 OF 2007**

**BETH WANGARI NJOROGE.....APPLICANT**

**VERSUS**

**NJERI MWANGI NJOROGE.....1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN GATANGA LAND DISPUTES TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF MAGISTRATE, THIKA.....3<sup>RD</sup> RESPONDENT**

**RULING**

Through a Notice of Motion dated 2<sup>nd</sup> July, 2014, the Applicant (Beth Wangari Njoroje) has come to Court, seeking the following orders:

- “1. This application be certified as urgent, service be dispensed with and it be heard *ex parte* in the first instance.**
- 2. The order dismissing the suit for want of prosecution be set aside.**
- 3. The suit be reinstated and set for hearing.**
- 4. The costs of this application be in the cause.**
- 5. Such other orders as the Honourable Court shall deem fit to grant in addition.”**

The application is premised on the grounds:

- “1. THAT the suit was dismissed *suo moto* without notice to the applicant or her advocates on record.**
- 2. THAT there was a genuine confusion as to the correct case number of this matter after it was transferred from the Nyeri High Court to Nairobi High Court.**
- 3. THAT the applicant/1<sup>st</sup> Respondent, through her advocates, made efforts to have the suit prosecuted but was advised that the court file could not be traced based on the erroneous case number.**
- 4. THAT the Respondent’s rights and interest will be highly compromised if the suit is not reinstated for hearing and determination on the merits.**
- 5. THAT it is in the interests of justice that this suit be reinstated for hearing and**

**determination based on the merits.”**

The application is also supported by the affidavit of the advocate of the Applicant Mr Victor Kimani Mungai sworn on the 2<sup>nd</sup> July, 2014. He avers that the case was instituted in the High Court at Nyeri through the Miscellaneous Civil Application No. 191 of 2003. Pursuant to a Legal Notice issued by the Chief Justice the matter was transferred to Nairobi High Court and given a new number namely Nairobi High Court J. R. Case No. 823 of 2007.

The Applicant's advocate avers that the matter was to be heard before Justice Kubo on 16<sup>th</sup> February, 2009 but owing to the absence of the Applicant's advocate due to sickness the Court ordered fresh hearing dates to be taken. Thereafter efforts were made to fix a hearing date without success. On 8<sup>th</sup> March, 2011, counsel for the Applicant sought to fix a hearing date but erroneously quoted the file as No. 823 of 2003. As such the file could not be traced in the registry.

The Applicant's case is that it was only on 24<sup>th</sup> March, 2014 that they realized they had been citing the wrong number. Upon perusing the correct court file they discovered that the matter had been dismissed for want of prosecution. It is the Applicant's case that the dismissal was done without notice. The Applicant therefore prays for the setting aside of the dismissal order and the reinstatement of the suit to hearing.

The question is whether the Applicant has established grounds for the reinstatement of the suit.

A perusal of the court file indeed shows that the Applicant's counsel gave the wrong number when seeking a hearing date for the matter. Further interrogation of the court file does not reveal any evidence of service of the notice to show cause on the parties. This matter may have indeed been dismissed without notice. In the interests of justice, this application succeeds. The order dismissing the matter is set aside. The Applicant shall proceed to invite the other parties for a mention with a view to taking directions on the hearing of the substantive notice of motion.

**Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of October, 2014**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**