



97REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL &ADMIRALTY DIVISION

CIVIL CASE NO. 573 OF 2007

1. **RABINDRA PROSONNO KUMAR MITTRA**
2. **EAST AFRICAN BUILDING SOCIETY**
3. **BHIKHUBAI RAMJI GHEDIA**
4. **SHAKUNTALAL MAGANBHAI PATEL**
5. **NOORBANUI HIRJI**
6. **KANTILAL TULSIDAS DHANAK**
7. **KANUBHA H. PATEL**
8. **AMRITLAL VADGAMA**
9. **SULTNALI HABIBI WALJI**
10. **SAIROZ BEGUM LALLANI**
11. **HASMUKH DEVSHI GHEDIA PLAINTIFFS**

VERSUS

COMMERCIAL INVESTMENTS LIMITED..... DEFENDANT

RULING

1. The **Notice of Motion** application before the court is dated **23rd October 2014**. It seeks the orders namely:-
 1. ***That this application be certified as urgent and the same be heard ex-parte in the first instance.***
 2. ***That this Honourable Court be pleased to set aside the Order made on 6th February 2012 dismissing the Plaintiff's suit.***
 3. ***That this suit be reinstated and be fixed for hearing and determination on merit.***
 4. ***That the costs of this application do abide the outcome of the main suit.***
2. The application is premised on the grounds set out therein namely:-
 1. ***That this case is dismissed by the court on the 6th February 2012 allegedly pursuant to a Notice to Show Cause dated 19th January 2012.***
 2. ***That no notice was ever received by the Plaintiffs or their advocates on record.***
 3. ***That the order of dismissal only came to the Notice of the Plaintiff's advocate when this court clerk went to fix a hearing date.***
 4. ***That the effect of the dismissal is quite drastic as it leaves the Plaintiffs as squatters***

on land that they rightfully and legally purchased.

5. *That it is in the interest of justice that the Plaintiffs suit be reinstated and that their claim for reversionary interest be awarded as prayed n the Plaint.*
 6. *That the reinstatement of this suit will not prejudice the Defendant in any way.*
3. The application is supported by affidavit of **Mohammed Akran Khan** dated **16th October 2014**.
 4. The application was served and affidavit of service filed in court on 22nd October 2014. The application is not opposed. The main ground worth considering is that by the time the suit was dismissed on 6th February 2012, there was already an interlocutory judgement on record for the Plaintiff, and what was waiting to be done was a formal proof. When the Plaintiff sought to list the matter for formal proof, they found that the suit was already dismissed.
 5. The above point is worth considering, and especially given that the suit is halfway done. Since the application is not opposed, I allow it as prayed and direct the Plaintiff to list the formal proof for hearing within 60 days from today.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 18TH DAY OF NOVEMBER 2014

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for the for Plaintiffs

No appearance for the Defendant

Teresia – Court C lerk