

REPUBLIC OF KENYA

High Court at Bungoma

Civil Case 13 of 2006

BONFACE NYONGESA NANDWOLIPLAINTIFF

VERSUS

FRANCIS BARASA INYASIDEFENDANT

RULING

The applicant has sought this court's orders for reinstatement of his suit dismissed on 26th June 2009 for want of prosecution.

The applicant avers in his application that his counsel Messers H.P. Wamalwa was struck off the roll of advocates but he was not made aware. His misfortune continued when his newly instructed advocates Messers Wachana & co. advocates were also struck off the roll. He contends the orders dismissing his suit exparte was premature, unprocedural and irregular.

The respondent was served with a hearing notice. I do not see the return of service filed in court on the application being served on him. However, I did allow the application to be prosecuted despite the absence of the respondent because of the affidavit of service on record indicating he was served for the hearing date.

I have looked at the court record, the respondent had been served with the O.S and he filed his replying affidavit. Subsequently the applicant filed an application dated 27th October 2007 for directions to be taken. The said application was fixed for hearing on 26th May 2008.

On this date, directions were taken. Thereafter nothing is recorded in the court file until 26.6.2009 when the suit came up for dismissal and is dismissed. There is no mention as to whether the parties were served with the notice to show cause why the suit should not be dismissed. It appears both parties were absent on the 26th June 2009.

Since the applicant had taken steps by fixing this matter for directions, this court finds his explanation of his advocates being struck off the roll as reason for delay reasonable. He first filed application to re-instate his suit in person on 17th February 2012 before his present counsel Ms. Wanyonyi & co. advocates withdrew it and substituted it with the present application. This is further demonstration of the applicant's effort to have the suit heard.

The respondent has not filed any documents to oppose the application nor did he attend court on the date fixed for hearing of the application. The application is therefore unopposed. For this and earlier reason given above, I allow the application, set aside the court's order of 26th June 2009 dismissing the applicants suit. The suit is reinstated forthwith.

RULING DATED, SIGNED, READ AND DELIVERED in open court this 21st day of May 2013.

**A. OMOLLO
JUDGE.**