



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1993 OF 2000

CHRISTOPHER KANAI KAMAU.....PLAINTIFF/APPLICANT

VERSUS

DAYONOSIOUS KAROMO NDIRANGU.....DEFENDANT/RESPONDENT

COMMISSIONER FOR LANDS.....1ST THIRD PARTY

KIKUYU TOWN COUNCIL.....2ND THIRD PARTY

RULING

1. This is the notice of motion dated 5th October 2020 brought under section 3A of the Civil Procedure Rules and Article 50 of the Constitution of Kenya, 2010.

2. It seeks orders:

1. *Spent.*

2. *That the honourable court be pleased to set aside the orders made on 26th of February, 2016 dismissing the plaintiff's suit and all other consequential orders thereto.*

3. *That the honourable court be pleased to reinstate the plaintiff's suit.*

4. *That the application filed herein be heard with due urgency.*

5. *That the costs of and incidental to this application do abide the result of the suit.*

3. The grounds are on the face of the application and are set out in paragraphs (1) to (24).

4. The application is supported by the affidavit of Muendo Festus Muteti, Advocate of the plaintiff/applicant sworn on the 5th October 2020.

5. Though the application is not opposed, there is no explanation as to why the advocate swore the affidavit in support instead of the plaintiff/applicant.

In paragraph 11 of the supporting affidavit, the advocate depones:-

“That on or about April 2016 the plaintiff was plunged into shock and dismay on the realization that the suit herein had been dismissed back in February 2016 for non-attendance”.

The advocate does not disclose the source of his information. Such averments could only be sworn by the plaintiff/applicant and not the advocate.

6. There are also averments in paragraphs 12 to 15 to which the advocate does not state the source of information.

7. I have gone through the record and find that there is a notice of dismissal of suit under order 17 rule (2) (1) and (4) of the Civil Procedure Rules, 2010.

8. The plaintiff/applicant is alleged to have realized the suit had been dismissed in April 2016. This application is dated 5th October 2020. No explanation has been given for the delay in bringing the application. The only conclusion is that the plaintiff has lost interest in prosecuting this suit just as he had lost interest prior to the dismissal.

9. I find no merit in this application and the same is dismissed with no orders as to costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18th day of February 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Muiruri for Mr. Muteti for the Plaintiff

No appearance for the Defendant

No appearance for the 1st Third Party

No appearance for the 2nd Third Party.

Phyllis –Court Assistant