



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CASE NO. 255 OF 2014

DENNIS NYAMANGAKA MAUBI.....1ST PLAINTIFF

EDWARD AKAMA MAUBI.....2ND PLAINTIFF

GEORGE BOSIRE.....3RD PLAINTIFF

LYDIA KEMUNTO.....4TH PLAINTIFF

JANE MORAA MAUBI.....5TH PLAINTIFF

(All suing in their capacity as the administrators of the estate of Maubi Osoro Gechure deceased)

VERSUS

JOSEPH MAERA OKEYO.....1ST DEFENDANT

GLADYS MOSE.....2ND DEFENDANT

RULING

INTRODUCTION

1. What is before me is the Defendants' Notice of Motion dated 18th August 2020 seeking to set aside the order of dismissal of the suit for want of prosecution made on 26th May 2016 and that the suit be set down for hearing on merit.

2. The Application is based on grounds stated on the Notice of Motion and the Supporting Affidavit of Jane Moraa Maubi sworn on the 18th August 2020. In the said affidavit she explains that the Plaintiffs were not aware that the suit had been set down for hearing as their former advocate did not inform them of the hearing date.

3. Strangely, the same Jane Moraa Maubi has sworn a Replying Affidavit on 18th August 2020 in opposition to the Application.

4. The Application was canvassed by way of written submissions but only counsel for the Plaintiffs/Applicants filed his submissions in which he urged the court to allow the Application. He cited the cases of **Gold Lida Limited v NIC Bank Limited and 2 Others (2018) eKLR** and **Philip Chemwolo & Another v Augustine Kubede (1982-88) KAR 103** in which the court took the view that the courts exist for purposes of deciding the rights of the parties and not for purposes of imposing discipline and proceeded to allow application to set aside orders of dismissal.

ANALYSIS AND DETERMINATION

5. In the instant suit since there is really no opposition to the Application and there is nothing to suggest that the Plaintiffs were aware of the hearing date, I am inclined to exercise my discretion in favour of the Applicants in line with the principle in the above cited authorities.

6. The upshot is that the Application has merit and the same is granted in terms of prayers 2 and 3 of the Notice of Motion.

The costs of the Application shall be in the cause.

Dated, signed and delivered at Kisii this 17th day of February 2021.

J.M ONYANGO

JUDGE.