



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAIROBI  
MILIMANI LAW COURTS**

**CIVIL CASE NO. 1724 OF 1990**

**MICHAEL GACHARA & 13 OTHERS ..... PLAINTIFF  
VERSUS  
COUNTY COUNCIL OF NAROK ..... DEFENDANT**

**R U L I N G**

This application is for setting aside of the order of this court dated 5th October, 1999 and to reinstate the suit dated 14th March, 1989 so that it is heard on merit. It is supported by an affidavit sworn on 15th November, 2000 and filed in court on 22/11/2000.

According to the affidavit which is not contested, while the applicant's counsel was waiting for his turn outside the Judge's chambers from 9:45 a.m on the date of the disputed order, least did he know his said case had been dismissed at 9.00 Tah.ims. averment was also made in an earlier similar application dated 26th October, 1999 and filed in court on 18th April, 2000 which was struck out by Honourable Justice Kuloba on 9/11/2000 with leave to file a fresh application which is now the subject of this ruling. Opposition to this application by counsel for the respondent is simply that the case is longstanding and that litigation must come to an end. That there was no substantive valid application filed in court until 19th April, 2000 which is an unreasonable delay, and so forth.

The record herein reveals that after the court made an order dated 5/10/99, the applicants made an application for setting it aside. Though they dated it 26th October, 1999, it was not filed in court until 18th April, 2000. This is a delay of about 6 months which counsel for the applicants does not say anything about, if at all to justify it.

Then counsel for the applicants says this is a sensitive land matter which calls for re-instatement. But in essence this is not a land matter. It is a claim for damages for assault and destruction to property.

The claim may be quite high but after the order of Hon. Justice Ole Keiwua, now of the Court of Appeal, was made on 5/10/99, dismissing the same for non-attendance, it was incumbent upon the applicants to act fast to file the present application and not take 6 months to do so if he cared, and even fail to explain the cause of such delay during submiHsoswioenvse r,h eirnesipni.te of all this, when the application filed herein on 18/4/2000 was dismissed by my brother Judge Kuloba on 9th November, 2000 and the applicants granted liberty for a fresh application to be lodged, they moved with haste and filed the present application on 22nd November, 2000.

Perhaps because of this latter quick action on the applicant's part, I am inclined to exercise the courts discretion in their favour and to set aside the court order dated 5th October, 1999 and to re-instate their suit dated 14th March, 1990 on condition that thrown away costs, which I assess at Kshs.12,000/- and the costs of this application assessed at Kshs.1500/- are paid by the applicants to the respondent within 15 days from the date of this order, failing which the suit to stand dismissed. M. 16/2/2000.

Delivered and dated this 31st day of January, 2001.

D. K. S. AGANYANYA

JUDGE