



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC CASE NO. 673 OF 2015**

**IN THE MATTER AFFECTING THE RIGHTS FO THE HEIRS TO THE ESTATE OF PETER DEYA GUMBA**

**AND**

**IN THE MATTER OF ASCERTAINING THE HEIRS OF PETER DEYA GUMBA**

**BETWEEN**

MARY ACHEING DEYA OKONG'O.....1<sup>ST</sup> PLAINTIFF

CORNER OMONDI ODUOR.....2<sup>ND</sup> PLAINTIFF

**-VERSUS-**

JOSEPH OBUGE ONGOTA.....1<sup>ST</sup> DEFENDANT

THE COUNTY LAND REGISTRAR, KISUMU COUNTY.....2<sup>ND</sup> DEFENDANT

**RULING**

Mary Achieng Deya Okong'o and Corner Omondi Oduor have come to this court against Joseph Obuge Ongota and the County Land Registrar seeking orders that the court sets aside orders issued on 16/12/2020 dismissing the application dated 20/1/2020 for non-attendance. That the court be pleased to reinstate the application dated 28/1/2020 for prosecution to its logical conclusion.

The is based on the grounds that the applicant filed an application for stay of taxation of the bill of costs dated 30<sup>th</sup> January 2020 before this court on 28<sup>th</sup> January 2020. The matter was then fixed for inter parties hearing on 12<sup>th</sup> February 2020 a date in which the matter did not proceed and it was adjourned to 16<sup>th</sup> December 2020.

The matter was then set down for hearing on 16<sup>th</sup> December 202 a date in which the Applicant did not attend since he was bitten by a snake which forced him to be rushed to the hospital. The Applicant came to realise later that the after he recovered and went to enquire with the Registry staffs of what transpired that his matter was dismissed for nonattendance.

The applicant has demonstrated sufficient interest in prosecuting the matter to warrant reinstatement of the matter before court. This application should be granted to meet the ends of justice. The respondent has not seriously challenged the allegations by the applicant as he has not filed a replying affidavit.

I do find that the applicant has shown sufficient cause for failing to attend court for the prosecution of the application dated 28<sup>th</sup> January 2020 and therefore I do grant the orders prayed namely that the orders issued on 16/12/2020 are set aside and the application dated 28/1/2020 is hereby reinstated. Costs in the cause.

**DATED AT KISUMU THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2021**

**ANTONY OMBWAYO**

**JUDGE**

**This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2019.**

**ANTONY OMBWAYO**

**JUDGE**