



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO.275 OF 2017

PRISCA NJOKI CHOMBA.....1ST PLAINTIFF/RESPONDENT

ANASATACIA CHOMBA.....2ND PLAINTIFF/RESPONDENT

EMMA WANGUI CHOMBA.....3RD PLAINTIFF/APPLICANT

VS

CHARLES MWANGI CHOMBA.....DEFENDANT/ RESPONDENT

RULING

1. This application filed on the 26/11/2020 seeks to set aside the orders made by the Court on the 12/10/2020 dismissing the suit so that it may be reinstated for hearing. Secondly that the Court orders the process server by the name Peter Ngei Kimatu to appear before the Court for cross examination.
2. The application is supported by the grounds annexed thereto and the Supporting Affidavit of the Applicant. That the Respondent only occupies ½ share of the land while the rest is occupied by Ruth Kabura. That she was not aware of the hearing date of the 510/12 and that she was not served with the hearing notice. That on the date of the purported service she was sick and had attended hospital in Nairobi.
3. That she only learned of the orders dismissing the case when she went to the registry in November 2020 upon being prompted by a phone call that her mother's house was being destroyed by the Respondent. That she stood to be condemned unheard if the application is not granted. That the Respondent will not be prejudiced.
4. In response the Respondent raised grounds of opposition. The Respondent too filed a Replying Affidavit in which he contends that the suit stood dismissed on 25/5/19 when the Plaintiff failed to set the matter down for hearing.
5. Parties argued the application in open Court and reiterated the contents of the pleadings.
6. I have perused the record and I concur with the Respondent that the correct position is that the suit stood dismissed 30 days after 24/4/2019, that is to say on the 25/5/19. The Court lifted the notice to show cause on condition that the suit is fixed for hearing within 30 days from 24/9/19 in default the suit would stand dismissed. It would appear that the Plaintiff went into deep slumber until 4/3/2020 when a certificate of urgency was filed.
7. Having said that I have perused the record and it is clear to me that the orders of the 12/10/2020 were given in error. I say so because by the 12/10/2020 the suit had been dismissed on the 25/5/19 and therefore there was no suit capable of any valid orders. The orders having issued in error cannot be allowed to stand as in doing so it will lead to an injustice. It is unfortunate that the Learned Counsel for the Respondent misled the Court to issuing orders in a non-existent case.
8. In doing so I am guided by Section 99 of the Civil Procedure Act which provides that Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court either of its own motion or on the application of any of the parties.
9. For the reasons given under para 7 the application is allowed and the orders dated the 12/10/2020 be and are hereby set aside in its entirety.
10. With the orders of the 12/10/2020 having been set aside and for avoidance of doubt, the orders of the 24/4/19 remain in force.

11. I make no orders as to costs.

12. It is so ordered.

DATED, SIGNED AND DELIVERED ONLINE AT MURANG'A THIS 1ST DAY OF FEBRUARY 2021

J.G. KEMEI

JUDGE

Delivered online in the presence of:

Nkomejimana for the 1st – 3rd Plaintiffs/Applicants

Defendant/Respondent – Absent

Kuiyaki, Court Assistant