



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 93 OF 2017

CYRUS MWAURA KAMAU.....PLAINTIFF/APPLICANT

VERSUS

JOHN MBUGUA WANYOIKE.....1ST DEFENDANT/RESPONDENT

THE LAND REGISTRAR, MURANGA.....2ND DEFENDANT/RESPONDENT

PETER WANYOIKE.....1ST INTERESTED PARTY/RESPONDENT

ANTONY WANYOIKE.....2ND INTERESTED PARTY/RESPONDENT

RULING

1. This Ruling is in respect of the Plaintiff's Notice of Motion Application dated 1/10/2020. It seeks this Honorable Court's orders that the Orders made on 29/09/2020 dismissing his Notice of Motion Application dated 18/08/2020 be set aside and the said Application be reinstated for hearing.
2. The Application is premised on grounds that the Application dated 18/08/2020 was dismissed for non-attendance/want of prosecution on the hearing date whilst the Plaintiff's Counsel was mistakenly in a wrong Court room. That the Plaintiff has been intent on prosecuting his case as can be seen from the previous Court record.
3. The Application is supported by the Affidavit of Simon N. Nkako, Advocate who avers that on the said hearing date, this matter was listed on the cause list and that it was until 9.30 am when the Court proceedings for the Court room he was in started by a different Judicial officer and staff and realized he was in the wrong Court. That he inquired and learnt that the ELC Court was sitting upstairs but by the time he arrived, the matter had already been called out hence the dismissal orders.
4. That his absence is excusable as he was under the honest but mistaken belief the he was in the correct Court room and that previous Court record demonstrates their keen interest in prosecuting this suit. In any event, Counsel deponed, that hearing would not have proceeded on the said date as the Respondent had filed their Replying Affidavit the previous day but had not served them. He urged the Court to allow the Application as the same would not prejudice the Defendants.
5. The Application despite being served on the Defendants, was not opposed.
6. The Application was argued orally before this Honorable Court on 23/02/2021 in the absence of the Defendants. I have perused the Court file and note that there is Return of Service dated 19/02/2021 and filed on 23/02/2021 evidencing both physical and electronic (via email) service upon the Defendants.
7. The main issue for determination by this Honorable Court is whether the Court can set aside the dismissal orders and reinstate the application dated 18/08/2020 for hearing.
8. The Applicant has invoked the Court's inherent powers under Section 3A of the Civil Procedure Act as well as the overriding objectives under Sections 1A and 1B thereof. This power is further anchored in Article 159(2)(d) of the Constitution to enable Courts make such orders as may be necessary for the ends of justice.
9. That said, it is trite that reinstatement of an application or suit that has been dismissed for non-attendance/want of prosecution, as the case maybe is not automatic. Cogent reasons must be given for such non-attendance to the satisfaction of the Court.
10. I have considered the reason for the Applicant's Counsel non-attendance and acknowledge that indeed the Court room for this Honorable

Court changed to its current Court due to the ongoing Court construction. Additionally, the impugned orders were made on 29/09/2020 and the Applicant timeously filed this Application on 13/10/2020.

11. It is the view of the Court that the Applicant's conduct is not intended to cause injustice or pervert the cause of justice.

12. I allow the application with no orders as to costs. The orders of the Court given on the 29/9/2020 are hereby set aside in its entirety and the application dated the 18/8/2020 is hereby reinstated.

13. Parties to take urgent steps to fix the application for interpartes hearing at the registry on priority basis.

14. It is so ordered.

DATED, SIGNED & DELIVERED ONLINE THIS 11TH DAY OF MARCH 2021.

J. G. KEMEI

JUDGE

Delivered online in the presence of:

Memusi is online but muted.

1st & 2nd Defendants – Absent

Interested parties – Absent

Njeri, Court Assistant