



Njeri v Personal representatives of Eunice Waithera Kang'Ethe Haskins (Environment & Land Case 916 of 2015) [2024] KEELC 4156 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4156 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 916 OF 2015**

JE OMANGE, J

MAY 2, 2024

BETWEEN

SARAH SEMITI NJERI PLAINTIFF

AND

**PERSONAL REPRESENTATIVES OF EUNICE WAIHERA KANG'ETHE
HASKINS DEFENDANT**

RULING

1. In the Notice of Motion application dated 19th December 2023 the Applicant sought the following Orders:
 - a. That the honourable court be pleased to set aside the orders made on 11th July 2019 dismissing the plaintiff's suit
 - b. That the honourable court be pleased to reinstate the plaintiff's case.
 - c. Costs of the application
2. The applicant depones that she had engaged the firm of Ratemo & Company Advocates to represent her in the matter, but the firm was dissolved and was not in a position to offer legal services.
This led to dismissal of the suit for want of prosecution. That she became privy to this information in the year 2022 when she sought services of new counsel that is the firm of CR advocates on whose advice she has made this application.
3. She further deponed that the non-attendance was occasioned by the actions of her former counsel on record, who did not inform her that the suit had been dismissed for want of prosecution. That the transition of legal counsel from the previous advocates to the current advocates had created a gap that led to dismissal of the case which she was eager to prosecute.



4. The applicant in her submissions argued that the mistakes of the previous counsel should not be visited upon her. She submitted that she had never received the notice to show cause and if indeed it was served then it was to her who communicate to her. She averred the failure to prosecute was not intended to defeat justice as she is keen on prosecuting the matter as it raises triable issues that ought to be heard on merit.
5. She relied on the provisions of Order 12 rule 2 of the Civil Procedure Rules 2010 She cited the case of Thathini Development Company Limited Vs Mombasa Water Sewerage Company & Another (2022) Eklr.

And the case of Boniface Kamau Njoroge Vs John Waweru Wanjohi (2021) eKLR.

6. The Respondent herein, did not participate hence the applicant's application is unchallenged and uncontroverted.

Though the application is unopposed, it is the duty of the Court to nevertheless subject it to a merit evaluation in accord with the applicable laws and principles. Indeed, in Gideon Sitelu Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR the Supreme Court of Kenya held that;

“as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It is for the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court...”

7. Under Order 12 Rule 7, the court has discretion to set aside, recall and or reinstate a suit or application dismissed for non-prosecution or no-attendance. In the case of John Nahashon Mwangi –vs- Kenya Finance Bank Limited (in Liquidation) [2015 eKLR, the court held the tests to apply in an application to reinstate a suit are;
 - i. Whether there are reasonable grounds to reinstate,
 - ii. Considering the prejudice that the defendant would suffer if reinstatement of the suit was made against the prejudice the plaintiff would suffer if the suit is not reinstated.
8. The court's main mandate is to do justice to parties and must exercise the discretion judiciously to avoid injustice resulting from inadvertence or excusable mistake. In view of the fate of the law firm that was representing the Plaintiff, it is possible that this could have led to the dismissal of the suit. Articles 48 and 50 of *the Constitution* guarantees every Kenya right to access justice and right to fair hearing. Article 159 requires that justice shall be administered without undue regard to technicalities whereas Sections 3, 4 and 13 of the *Environment and Land Court Act* as read together with Section 1A, 1B and 3A of the *Civil Procedure Act* expects the court to strive towards substantive justice.
9. Considering that this is a land dispute and considering the circumstances of the Plaintiffs advocates which could have exacerbated the situation, I find that the application is merited. The Plaintiff should however take personal responsibility by ensuring that she follows up with her advocate on the progress of the case. The application is allowed as follows;



- a. The order dismissing the suit made on 11th July, 2019 is hereby set aside and the suit reinstated for hearing
- b. The Plaintiff to comply with the case time table as shall be set by the court.
- c. Costs of the application will be borne by the Plaintiff.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS ON 2ND OF MAY 2024.

JUDY OMANGE

JUDGE

In the Presence of: -

-Mr. Angeza for Mr. Wamunyolo for the Applicant

-Court Clerk: Steve

