

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL NO. 3 OF 2018

RAHAB WANJIRU KIARIE.....APPELLANT

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....1ST RESPONDENT

DUNCAN KINYANJUI NGIGE.....2ND RESPONDENT

JUDGEMENT

1. The Appellant lodged this appeal against the decision of the Honourable Ms. S. Atambo, Principal Magistrate in Milimani CMCCC No. 107278 of 2006 delivered on 4/4/2014 vide which the Learned Magistrate dismissed the Appellant's application dated 22/10/2013 which sought the reinstatement of the suit.
2. The Respondents did not participate in the appeal proceedings despite being served with hearing notices whenever the matter came up in court. The Appellant filed submissions. The grounds of appeal are set out in the Memorandum of Appeal dated 2/5/2014. The gist of her appeal is that the Learned Magistrate erred in not finding that her failure to attend court was occasioned by the fact that she had been bedridden from 2005 following her being diagnosed with colon cancer in 2000 which she battled until 2011. She added that at that same time she was battling severe depression and could not instruct an advocate to prosecute her claim in court.
3. She relied on various decisions and urged the court to set aside the orders of the Learned Magistrate made on 4/4/2014 or in the alternative that this court makes its own findings. She urged that she had given sufficient reasons and had satisfactorily explained the delay in prosecuting her case.
4. The Learned Magistrate based her decision on there being no medical documents to support the Appellant's contention that she had been ill. The court went further to state in the ruling that the Appellant's counsel could have attended court to explain her ill health to the court.
5. The Appellant annexed a medical report prepared by Dr. Eliud Njuguna, Oncologist on 21/2/2013 to her application for reinstatement of her suit. The report explained that she had been diagnosed with colon cancer and underwent treatment including radiotherapy until July 2011. The report also mentioned that the Appellant had significant psycho emotional distress during the period of treatment.
6. The court is satisfied that the failure and delay by the Appellant to prosecute her claim in court was occasioned by her ill health.
7. The court allows the appeal, sets aside the orders made on 4/4/2014 and reinstates the Appellant's suit before the Chief Magistrates Court. There shall be no orders as to costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL 2021.

K.BOR

JUDGE

In the presence of:-

Ms. Rahab Wanjiru- the Appellant

Mr. V. Owuor- Court Assistant

No appearance for the Respondent