



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 645 OF 2015

ISHMAEL KIRIUNGI MUKUNYA.....PLAINTIFF/APPLICANT

VERSUS

OSCAR KABWANA

T/A C.D.D. CONSORTIUM GROUP.....DEFENDANT/ RESPONDENT

RULING

1. The Application is premised on the dismissal of the suit due to non-attendance on 17th November 2021. The Plaintiff moved the Court vide a Notice of Motion dated 17th November 2021 and a Supporting Affidavit sworn by **Ishmael Kiriungi Mukunya** the Plaintiff herein

2. In respect to the said Application, the Plaintiff sought the following orders:

i. Spent.

ii. That this Honourable Court be pleased to set aside the proceedings of 17th November 2021, with a view of re-instating the suit for hearing.

iii. That the costs of this application be provided for.

3. On 2nd February 2022 when the Application came up for hearing, Counsel for the Applicant submitted orally and urged the Court to allow the Application as prayed since the same had been served upon the Respondent and it was not opposed. The Court was also furnished with an Affidavit of Service sworn by **James Kamundia Ndirangu** on 18th November 2021 which confirmed that indeed the Respondent had been duly served and was aware of the scheduled Court's proceedings.

4. It is the Plaintiff's assertion that due to technical hitches, his Advocate was unable to take down proper instructions which resulted in his non-attendance. He further claimed that he would suffer injustice if the suit is not reinstated since he has been dispossessed of the suit property.

5. The Court is guided by **Order 12 Rule 7 of the Civil Procedure Rules** which expressly provides as follows:

"...Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just

6. I have perused the Court proceedings that confirm **Advocate Omondi** for the Plaintiff was ready to proceed with the hearing of one witness. I have considered that by filing the reinstatement application the same day it was dismissed, the Plaintiff moved with haste to correct their inadvertent error.

7. For this reason, the Court so orders that:

i. The order of dismissal given on 17th November 2021 is hereby set aside and the suit is reinstated.

ii. Costs of the application shall be reserved to abide the determination of the main suit.

8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF FEBRUARY 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Omondi h/b for Ms. Kashindi for the Plaintiff/Applicant

N/A for the Defendant/Respondent.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO

JUDGE