



**Kamau v Chepkoko (Environment & Land Case 126 “A” of 2018)
[2022] KEELC 14626 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14626 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 126 “A” OF 2018
EO OBAGA, J
NOVEMBER 3, 2022**

BETWEEN

ANNAH WAMBUI KAMAU PLAINTIFF

AND

ESTHER CHEPKOKO DEFENDANT

RULING

1. The Plaintiff/Applicant filed a notice of motion dated April 27, 2022 in which she sought the following orders:-
 1. Spent
 2. That this honourable court be pleased to set aside an order dismissing this suit and all the other consequential orders and reinstate the same for hearing on merit.
 3. That pending the hearing and determination of this application inter partes there be a temporary order of restraining the Defendant, her agents and/or servants from or in any other way selling, developing and dealing with land parcel number Kapsoya Block 9/2728.
 4. That pending the hearing and determination of this suit there be a temporary order of injunction restraining the Defendant, her agents and/or servants from in any other way selling, developing and /or dealing with land parcel number Kapsoya Block 9/2728.
 5. That costs of this application be provided for.
2. The Plaintiff filed this suit against the Defendant/Respondent on November 20, 2018 seeking for a declaration that the Respondent is a trespasser on LR. No Kapsoya Block 9/2728 and for a permanent injunction restraining her from in any way interfering with the suit property.



3. The case was placed before the Deputy Registrar on September 30, 2020 for directions. The Deputy Registrar fixed the case for mention on November 4, 2020 but come that date, neither the Plaintiff nor the Defendant appeared. The Deputy Registrar fixed the matter for mention on January 26, 2021. Later on that day that is November 4, 2021, counsel for the Defendant appeared and asked the court for leave to serve the plaintiff through registered post. This request was granted.
4. On January 26, 2021, Counsel for the Defendant appeared before the Deputy Registrar when the Deputy Registrar referred the file to the Judge for mention on February 23, 2021. The record however shows that counsel for Defendant appeared before the Judge on February 19, 2021 four days earlier than the February 23, 2021 when the matter had been slated for mention. The counsel requested for a hearing date and was given June 16, 2021 for hearing.
5. On June 16, 2021, the Plaintiff who had been served with a hearing notice through registered post did not attend court. The Plaintiff's case was dismissed with costs for non-attendance.
6. The Applicant contends that she never received the mention notices or the notice for hearing. She also concedes to having received the taxation notice. She contends that her case was dismissed on June 16, 2021 when matters were being handled online due to covid 19 pandemic. The Applicant states that as at the time the suit was dismissed, she was acting in person. She therefore prays for the setting aside of the dismissal order so that she can be heard.
7. The Applicant's application was opposed by the Respondent through a replying affidavit sworn on June 23, 2022. The Respondent contends that though the Applicant filed her case in 2018, she never bothered to prosecute the same. It is her counsel who took mention dates and hearing dates and served the Applicant but she never bothered to attend court.
8. The respondent argues that as the applicant has admitted that she received taxation notice, the dismissal should not be set aside as the same mode used to serve mention notices and hearing notice and the taxation notice was the same and that in any case, the applicant's application has been drawn by an advocate not on record.
9. Parties were directed to file written submissions. The applicant filed her submissions on July 27, 2022. The Respondent filed her submissions on October 4, 2022. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions by the parties. The only issue for determination is whether the applicant has demonstrated that's he has a reason as to why she did not attend court on June 16, 2021.
10. Though the applicant claims that she never received mention notice or hearing notice, I find that this is not true. This is because she has admitted that she received a taxation notice. The taxation notice was sent by registered post. This is the same mode which was used to send mention notices and hearing notice. The deputy registrar had granted leave for her to be served by registered post.
11. However, notwithstanding the fact that notices were sent and were received, it is important to note that the Applicant was acting in person. Perhaps she did not understand the importance of the mention notices or hearing notice. She may have been awakened up by the taxation. This is the time she sought services of a lawyer. It is also important to note that as at the time the suit was dismissed, hearings were being heard virtually. Not all litigants who appear in person are technologically endowed. It is therefore possible that she may not have logged in during the hearing.
12. This is a case where the applicant has title to land which is occupied by the respondent. There is need to hear the parties so that the true owner can be found. It is for this reason that I find that there is need to set aside the order of June 16, 2021 dismissing the applicant's suit. I therefore proceed to allow the



Applicant's application dated April 27, 2022 to the extent that the order of June 16, 2021 dismissing the plaintiff's suit together with consequential orders are hereby set aside. The applicant is at liberty to set down the suit for hearing once there is full compliance with order 11 of the *Civil Procedure Rules*. The applicant shall pay the Respondent costs of Kshs 10,000/= payable before the suit is heard.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 3RD DAY OF NOVEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kinyekwai for Defendant/Respondent

Ms. Munji for Mr. Nyamweya for Plaintiff/Applicant

Court Assistant -Albert

E. O. OBAGA

JUDGE

