

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 110" A" OF 2012

ABDUL KADIR ODUOR NGUTU (Suing as the

personal representative of the Estate of

PATRICK NGUTU OCHIENG.....PLAINTIFF

VERSUS

RURAL HOUSING ESTATES LTD & ANOTHER.....DEFENDANTS

RULING

The application before court is dated 13th March, 2012. The applicant seeks orders that the suit be reinstated and be heard afresh.

The application is based on grounds that the suit was dismissed on 7th June, 2011 for want of prosecution. The plaintiff was never notified of the hearing date either by the defendant or his advocate. That the applicant shall suffer substantial loss if condemned unheard for a mistake that is not his own. That he learnt of the dismissal on 1st March, 2012.

In the replying affidavit of Shrikesh Gheewala, the Director of the defendant, it is stated that the plaintiff brought the suit by originating summons filed on 27th February, 2003. Directions were taken on 25th October, 2005. The plaintiff died on 24th March, 2006. Substitution was done by 11th December, 2006. The main suit was never set down for hearing. In 2007, a skeleton file was constructed. The matter was set down for hearing in 2008 but the plaintiff's counsel sought an adjournment.

On 17th March, 2009, the plaintiff did not attend court when it was due for hearing. The plaintiff did not attend court on 27th January, 2010. The plaintiffs were granted the last adjournment but further failed to attend.

On 23rd March 2011, the plaintiff's counsel sought a further adjournment. The court awarded the defendant costs of Kshs.23,000 and matter was set down for hearing on 8th June, 2011. On 8th June 2011, the plaintiff was absent in court. On 23rd March 2011, the plaintiff had not paid costs and the suit was dismissed.

Plaintiff's counsel made application to cease acting on 13th July, 2011 after the suit had been dismissed. A decree was obtained and costs taxed. The plaintiff did not attend on 19th July, 2011. Ruling was made on 18th November, 2011 when the plaintiff's advocate did not attend.

I have considered the application and the replying affidavit and do find that the mistakes of the plaintiff and his counsel are plenty. They are guilty of laches, failure to attend court on scheduled dates, failure to pay costs ordered by the court and therefore, the plaintiff does not deserve the orders sought as he who comes to equity must do equity. The application dated 13th March, 2012 is dismissed with costs.

Dated and delivered at Eldoret this 9th day of July, 2019.

A. OMBWAYO

JUDGE