



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC PETITION NO. 1 OF 2018

AHMED SULEIMAN OMAR.....PETITIONER

-VERSUS-

THE COUNTY GOVERNMENT OF NAROK...RESPONDENT

RULING

This is an Application by the Petitioners brought under Section 1A,1B,3A and 63(e) seeking the reinstatement of a suit that was dismissed by court.

The Application was based on the grounds that the Petitioner is apprehensive that the Respondent may proceed to demolish the suit land and that he is desirous of prosecuting the suit herein to its logical conclusion and it shall serve the interest of justice to have the matter heard on merit.

The application was further supported by the Affidavit of Ojwang Agina who averred that they had at all times wanted the suit herein to be heard and determined and that their non-attendance in court on the date the Petition was dismissed was not deliberate and willful as he had the conduct of this matter and others and the matter was dismissed when he went out of court and that the Respondent will not suffer any prejudice in the event that the orders sought are granted.

The Application was opposed by the Respondent by way of a replying affidavit where he contends that the suit was dismissed for want of prosecution on the date it was fixed for hearing and that there were other various instances when the petitioner either failed to come to court or failed to comply with the directions of the court and thus the conduct of the Petitioner depicts him as one who is not interested in the prosecution of the petition.

On the non-attendance of counsel for the petitioner in court, the Respondents contends that even though counsel for the petitioner states he was in another court, he has not indicated which court he attended and what was the Case Number.

I have carefully read the application before me and the opposing submissions filed by the parties and what is before me is an application seeking the exercise of the discretion of the court to reinstate a suit which was dismissed.

From the record, I note and agree with the Respondent that the Petitioner had previously either not attended court nor complied with the direction's issued by the court which manifests itself as disinterested in the prosecution of the matter.

From the Affidavit in support of the Application which was sworn by the counsel for the petitioner he seems to take responsibility for the dismissal and I have no reasons to doubt that he was within the court precincts as he asked me to have the order for dismissal vacated and I directed him to move the court appropriately resulting in the instant application.

The courts have severally held that the mistake of an advocate should not be visited upon a party to the proceeding. From the application I find that what occurred was a mistake by an advocate that the petitioner should not be made to suffer and furthermore the substantive issue that is before the court is a constitutional petition in which the applicant seeks to ventilate his rights as enriched in the constitution and it is incumbent and expected that court should not inhibit the right of access to justice in matters of constitutional.

Further I find that there was no inordinate delay in bringing the application.

From the foregoing and in the interest of justice and having considered all factors in the instant case I will exercise my discretion and allow the application dated 22nd January, 2019 and I accordingly reinstate the petition herein and wholly set aside the order of the court made on 21st January, 2019. However, the Petitioner will pay throwaway costs of kshs. 50,000/- to the Respondent as costs of the application and either incidentals for attendance of court on the date the petition was dismissed and for the application herein.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 9th day of July, 2019

Mohammed Noor Kullow

Judge

9/7/19

In the presence of: -

Mr Kiptoo holding brief for Kere for the respondent

Mr Meingati holding brief for Agina for the Applicant

CA:Chuma

Mohammed Noor Kullow

Judge

9/7/19