



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. 132 OF 2010

GEORGE KAMAU.....PLAINTIFF/APPLICANT

=VERSUS=

DAYKIO PLANTATION LIMITED.....DEFENDANT/RESPONDENT

RULING

1. This is the notice of motion dated 25th June 2015 brought under order 51 rule 1 and 15 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act, Cap 21 Laws of Kenya.

2. It seeks orders:

(1) Spent.

(2) That the honourable court be pleased to reinstate this suit.

(3) That the plaintiff be allowed to canvass the issues raised in their pleadings on merit.

(4) That the costs of this application be provided for.

3. The grounds are on the face of the application and are:-

(1) That the applicant had filed a suit on 9th March 2010 as amended on the 19th November 2013, where the plaintiff was seeking for among other special and general damages.

(2) That the suit came up for a notice of show cause why the suit should not be dismissed on 25th May 2015. However, the applicant's advocate was unable to attend court for reasons which are inadvertent and excusable.

(3) That counsel's mistake should not be visited on the litigant.

(4) That the applicants advocate attended court on that day and had three other matters that is, HCCC No.555 of 2007 and HCCC No.438 of 2010 and HCCC No. 441 of 2011.

(5) That by the time the applicant's advocate came back to the court the matter had already been dismissed and the court record's already reflected the same.

(6) That the applicant should be granted an opportunity to canvass the issues in the application on merit as failure to attend court in inadvertent and excusable.

4. The application is supported by the affidavit of Protas Saende, advocate for the plaintiff sworn on the 25th June 2015.

5. The defendant/respondent has not filed any grounds of opposition or affidavit in reply.

6. I have considered the notice of motion, the affidavit in support, the written submissions of counsel and the authorities cited. The issue for determination is whether the application is merited.

7. I have gone through paragraph 3 of the supporting affidavit of Protas Saende, Advocate sworn on the 25th June 2015. He was aware that

the matter was coming up for notice to show cause on 25th May 2015. In paragraph 5 he states that he went to attend to other matters in other courts. I am not satisfied that he has put forward sufficient reasons to warrant this court to reinstate the suit. It appears the plaintiff had lost interest in this suit way before it was listed for notice to show cause as to why it should not be dismissed.

8. I find no merit in this application and the same is dismissed. I make no orders as to costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 11TH day of JULY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant