



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 2 OF 2014**

**GIDEON KIILU NDOLO.....PLAINTIFF/APPLICANT**

**VERSUS**

**PETER KYULE.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**JASON MWANZIA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ANNA MWIKALI MWAU.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This matter was dismissed by the court on its own Motion on 13<sup>th</sup> April, 2018 for want of prosecution. The Plaintiff has now filed an Application dated 15<sup>th</sup> January, 2019 in which he is seeking for the following orders:

***a. That the court be pleased to set aside the order made on 13<sup>th</sup> April, 2018 dismissing this suit for want of prosecution and reinstate the suit to be heard and determined on its merits.***

***b. The costs of this Application be in the cause.***

2. The Application is premised on the ground that the Plaintiff was not aware of the Notice to Show Cause that came up on 13<sup>th</sup> April, 2018; that the Plaintiff stands to lose his property if the court order remains and that the delay in prosecuting the suit was caused by failure by the Plaintiff to get a suitable advocate to represent him.

3. In his Affidavit, the Plaintiff deponed that he instructed the firm of A.M. Mbindyo & Company advocates to represent him on 21<sup>st</sup> December, 2015; that he thereafter differed with his advocate whereupon he instructed the current firm of advocates to represent him and that because the court file could not be traced, the firm of Mulwa Isika & Mutia advocates were unable to file their Notice of Change of Advocates on 25<sup>th</sup> September, 2018.

4. The Plaintiff finally deponed that his former advocate did not inform him that he had received the Notice to Show Cause why the suit cannot be dismissed and that he will lose his land which was fraudulently taken away from him unless the current Application is allowed. The Respondent did not oppose the Application.

5. This suit was commenced by way of a Plaint dated 16<sup>th</sup> January, 2014. The record shows that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants entered appearance on 28<sup>th</sup> February, 2014 and filed a Defence on 14<sup>th</sup> March, 2014. The 1<sup>st</sup> Defendant entered appearance on 26<sup>th</sup> March, 2014 and filed his Defence on 31<sup>st</sup> March, 2014.

6. Since the filing of the suit in the year 2014, the Plaintiff never took any step to fix the matter for hearing or for pre-trial directions. It is for that reason that the Plaintiff's then advocate, A.M. Mbindyo & Co. Advocates was served by this court with a Notice to Show Cause why the suit should not be dismissed for want of prosecution. The Plaintiff's advocate duly received the Notice to Show Cause on 8<sup>th</sup> March, 2018.

7. However, when the Notice to Show Cause came up for hearing on 23<sup>rd</sup> March, 2018, neither the Plaintiff nor his advocate were in court to explain why the matter should not be dismissed for want of prosecution.

8. The Plaintiff's then advocate has not denied that he was actually served with the Notice to Show Cause. Indeed, by the time the Plaintiff purported to instruct his current advocate, the suit had already been dismissed for want of prosecution.

9. The issue of the Plaintiff having fallen out with his former advocate cannot be a reason to set aside the order of this court dismissing the

matter. It has always been the position of this court that it is the duty of a litigant to make a follow-up of a case that is filed in court on his behalf by an advocate. Where an advocate is negligent and takes unreasonably long to fix the matter for hearing, then the litigant will suffer the consequences if his matter is dismissed for want of prosecution. It will not matter that the advocate is to blame for the delay in prosecuting the matter.

10. The Plaintiff having not made a follow-up on the suit for more than four (4) years has himself to blame. In the circumstances, I dismiss the Application dated 15<sup>th</sup> January, 2019 with no order as to costs.

11. For avoidance of doubt, the suit stands dismissed for want of prosecution as ordered by the court on 13<sup>th</sup> April, 2018.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 5<sup>TH</sup> DAY OF JULY, 2019.**

**O.A. ANGOTE**

**JUDGE**