



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 160 OF 2017**

**PETER ONKOBA ORORA.....PLAINTIFF**

**VERSUS**

**PRIME MINISTRIES INTERNATIONAL.....1<sup>ST</sup> DEFENDANT**

**DUNCAN MUNGAI.....2<sup>ND</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MACHAKOS.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 21<sup>st</sup> June, 2019, the Plaintiff has prayed for the setting aside of the orders of 20<sup>th</sup> June, 2019 dismissing this matter for want of prosecution. The Application is premised on the grounds that the suit was dismissed without the Applicant having been given a notice for the dismissal of the suit and that it is only fair, just and in the interest of justice that this suit be reinstated and be heard on merit.

2. In his Supporting Affidavit, the Plaintiff deponed that he instructed the firm of Orondo Tuli & Co. Advocates to institute this suit; that every time the matter was fixed for hearing, his advocates attended court and that he later came to learn that the court had dismissed the matter for want of prosecution on 20<sup>th</sup> June, 2019.

3. According to the Plaintiff, he further learnt that his advocate had mis-diarized the date and did not therefore appear in court on 20<sup>th</sup> June, 2019 resulting to the court dismissing the suit and that mistakes done by an advocate should not be visited on the client. The Application was not opposed by the Defendants. The Plaintiff's advocate did not file written submissions. He relied on the Affidavit on record.

4. The record shows that after the filing of this suit on 5<sup>th</sup> April, 2017, the matter came up before the Deputy Registrar for Pre-trial Conferences on 8<sup>th</sup> May, 2017; 18<sup>th</sup> June, 2017; on 10<sup>th</sup> October, 2017 and on 27<sup>th</sup> February, 2018.

5. When the matter came up for hearing on 2<sup>nd</sup> May, 2018, the Plaintiff's advocate was ready to proceed. However, the case was adjourned at the behest of the Defendants. On 30<sup>th</sup> May, 2018, the matter was adjourned again. On the said date the court directed as follows:

***“The Plaintiff is given an adjournment. This being an environmental issue, I shall grant to the Plaintiff the last adjournment. Hearing on 4<sup>th</sup> December 2018.”***

6. The matter did not proceed for hearing on 4<sup>th</sup> December, 2018 because the court was not sitting. The Plaintiff's advocate then fixed the matter for hearing on 18<sup>th</sup> June, 2019. On the said date neither the Plaintiff nor his advocate were in court. The court dismissed the suit for want of prosecution.

7. It is the Plaintiff's advocate who fixed the date of 18<sup>th</sup> June, 2019 for the hearing of the suit. Indeed, while fixing the said date, the Plaintiff's advocate was aware that the court had granted the Plaintiff the last adjournment.

8. Although the Plaintiff deponed that his advocate mis-diarized the hearing date when the matter was to come up for hearing, he has not annexed any evidence of the alleged mis-diarization. In fact, the Plaintiff's advocate has not sworn an Affidavit stating that he mis-diarized the hearing date.

9. In the circumstances, I find that the Plaintiff has not satisfied the court that his absence in court on 18<sup>th</sup> June, 2019 was due to an honest excusable mistake. For those reasons, I dismiss the Notice of Motion dated 21<sup>st</sup> June, 2019 but with no order as to costs. For avoidance of doubt, this suit stands dismissed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2019.**

**O.A. ANGOTE**

**JUDGE**