



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 1 OF 2021

MILKA LUKA NDUNDA.....PLAINTIFF

VERSUS

LUCAS MUNYAO NDUNDA.....1ST DEFENDANT

JOHN KALII WAMBUA.....2ND DEFENDANT

RULING

1. In the Notice of Motion dated 28th September, 2020, the Plaintiff has asked for the following orders:

a. That this Honourable Court be pleased to grant an order of reinstatement of this suit after it was dismissed for want of prosecution.

b. That the costs be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that on 4th May, 2015, this court gave directions that it would deliver its Ruling on 26th June, 2015 but the court was not sitting on the said date and that the Ruling of the court was to be delivered by notice.

3. The Plaintiff deponed that he was never informed of the Ruling of the court; that he only later on realized that this case had been dismissed when he was served with a Bill of Costs dated 14th June, 2020 by the Defendant and that the suit should be reinstated because it was dismissed without him being notified.

4. In response, the 2nd Defendant deponed that this suit was dismissed on 29th November, 2018 for want of prosecution; that litigants in a suit are bound to exercise due diligence which requires that parties must follow up their matters to their logical conclusion and that no response was ever filed by the Plaintiff when he was served with a Notice to show cause why the suit should not be dismissed for want of prosecution.

5. In his submissions, the Plaintiff's advocate submitted that the rules of justice require that before an order adverse to any party is made by the court, the party ought to be heard; that a suit can only be dismissed after parties have been notified in writing and that the Plaintiff or his advocate was not served with the Notice to show cause why the suit should not be dismissed for want of prosecution.

6. On his part, the Defendants' advocate submitted that the Plaintiff was served with a Notice to show cause why the suit should not be dismissed but chose not to attend; that equity aids the vigilant and not the indolent and that litigation must come to an end.

7. This suit was commenced by way of a Plaint dated 22nd July, 2014. The 2nd Defendant entered appearance on 24th September, 2014 and filed his Defence dated 13th October, 2014 on 14th October, 2014.

8. The record shows that simultaneously with the Plaint, the Plaintiff also filed a Notice of Motion dated 22nd July, 2014 in which he sought to stay Machakos CMCC No. 1264 of 2010. The Ruling in respect to the said Application was slated for 26th June, 2015 by Kariuki J. It would appear that Kariuki J. was transferred from the station before delivering the said Ruling.

9. Indeed, this court is aware that after the Supreme Court in *Republic vs. Karisa Chengo & 2 Others (2017) eKLR* held that High Court Judges did not have jurisdiction to resolve disputes relating to land, Kariuki J. did not deliver the pending Judgments and Rulings in all land matters.

10. I have perused the record and I have not come across any letter showing that the Plaintiff or his advocate made any effort to have the

matter mentioned before the Environment and Land Court Judge for a Ruling date or for further directions.

11. Indeed, the Plaintiff has not explained to this court why no action was taken on the file between 26th June, 2015 when the matter was last in court and on 29th November, 2018 when the matter came up for dismissal of the suit for want of prosecution.

12. Although the Plaintiff has deponed that his advocates were never served with the Notice to show cause dated 8th November, 2018, his advocate, on whom the Notice to show cause was addressed to, did not file an Affidavit to dispute that this court never served him with the same.

13. The Plaintiff's advocates having not sworn an Affidavit disputing service on the law firm with the Notice to show cause why the suit should not be dismissed, I decline to entertain the argument that the said advocates were not served with the Notice.

14. The Plaintiff having not given any plausible reason why he never moved the court for a period of two (2) years, and the Plaintiff's advocates having not sworn an Affidavit disputing service of the Notice to show cause on their firm, I decline to allow the Application dated 28th September, 2020.

15. For those reasons, the Application dated 28th September, 2020 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 21ST DAY OF MAY, 2021.

O. A. ANGOTE

JUDGE