



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.629 OF 2015

SAMUEL ODHINGO WERE.....PLAINTIFF

VERSUS

JOHN OTIENO WERA.....DEFENDANT

RULING

1. **Samuel Odhingo Were**, the Plaintiff, vide notice of motion dated 14th June 2017, seeks for the dismissal order made on the 20th March 2017 to be set aside and the suit reinstated. The application is based on the nine (9) grounds on its face marked (a) to (i) and supported by his affidavit sworn on the 14th June 2017 among others, attaching a letter done by his advocate addressed to the Deputy Registrar dated 13th July 2017 and received by the court on the 17th January 2017.

2. The application was duly served on John Otieno Wera, the Defendant, who appeared in court on the 20th November 2017. That the court gave the Defendant time to file and serve his replying papers and adjourned the hearing to the 14th March 2018 but none was filed.

3. The court carefully considered the grounds on the notice of motion, the affidavit evidence, the pleadings filed and come to the following determination;

a) That though the notice to show cause dated 17th November 2016 was set for hearing on the 20th March 2017, none of the parties attended court. The suit was dismissed for failure to take steps for more than one year under **Order 17 Rule 2** of Civil Procedure Rules.

b) That the Plaintiff's affidavit evidence, which has not been rebutted or controverted, shows that the counsel for the Plaintiff had on the 13th January 2017 done a letter to the court that was received on the 17th January 2017 seeking for assistance to trace the file. The letter refers to the reference of Kisumu H CC NO.5 of 2011(OS), which was the former reference of the suit before transiting to Kisumu ELC NO.629 of 2015.

c) That the Plaintiff's explanation that the failure to notify him and his counsel of the new case file reference may have caused the delay in tracing the file and taking of action to prosecute the case is not only reasonable but also understandable.

4. That for reasons set out above the Plaintiff's notice of motion dated the 14th June 2017, and filed on the 30th June 2017 has merit and is allowed with costs in the cause. The dismissal order of 20th March 2017 is hereby set aside and the originating summons reinstated.

Orders Accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 2ND DAY OF MAY 2018

In presence of;

Plaintiff Present

Defendant Absent

Counsel Mr. Kulundu for Mr. Athung'a for Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE