



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1315 OF 2016

PETER MWENDWA MUTHUI.....PLAINTIFF

- VERSUS -

MARRY NJERI THITU.....1ST DEFENDANT

NSM MEDIA PRODUCTION AKTIEBOLAG.....2ND DEFENANT

RULING

1. This is the Notice of Motion dated 14th January 2021 brought under section 3 and 3A of the Civil Procedure Act, Order 51 rule 1 of Civil Procedure Rules, Article 159 (d) of the Constitution of Kenya 2010.

2. It seeks orders:-

1. Spent.

2. That, this honourable court do issue an order reinstating suit No 1315 of 2016 which was dismissed on 14th February, 2019 for reason of want of prosecution by Hon. Lady Justice L. Komingoi under order 17 rule 2 of the Civil Procedure Rules 2010.

3. That, the costs of this application be costs in the cause.

3. The grounds are on the face of the application and are set out in paragraphs (i) to (vii).

4. The application is supported by the affidavit of Peter Mwendwa Muthui, the plaintiff/applicant herein, sworn on the 14th January 2021.

5. It appears the application is not opposed.

6. I have considered the Notice of Motion and the affidavit in support. The issue for determination is whether this application is merited.

7. In paragraphs 4 of the supporting affidavit the plaintiff/applicant states that he was not served with the notice to show cause for 14th February 2019. In paragraph 7 of the supporting affidavit he states that the suit raises serious issues of facts and law with high probability of success. He relies on the sale agreement dated 10th September 2011. The purchase price is Kshs.4,200,000/-. It is not in dispute that the plaintiff/applicant never paid the full purchase price. His claim that this case has high chances of success cannot be true.

8. I have gone through the court records. The plaintiff/applicant filed a notice of motion dated 24th October 2016. When the matter came up on 9th November 2016, the defendants/respondents were given time to put in their responses. The parties were then directed to take a date for the application in the registry. It appears from this point the plaintiff/applicant went into a slumber necessitating the matter to be set for dismissal on 14th February 2019. It appears the plaintiff has lost interest in the case. It would not serve any interest of justice to reinstate this suit. I find no merit in this application and the same is dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 22ND DAY OF JULY 2021

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. J. Ranah for the Plaintiff

No appearance for the Defendants

Phyllis - Court Assistant