

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 14 OF 2018

(FORMERLY MERU HCC NO 71 OF 1995 AND NYERI HCCC NO. 60 OF 1987)

MBOGORI BAICHU..... PLAINTIFF

-VERSUS-

DAVID GITONGA MUNGANIA (Sued as the legal representative of the

Estate of LIVINGSTONE M'MUNGANIA-DECEASED).....DEFENDANT

RULING

1. Before me is a notice of motion dated 8/04/2021, in which the defendant/applicant is seeking orders to review and/or set aside the order of 15th March 2021 dismissing the applicant's notice of motion dated 26th February 2021 for want of prosecution. It is averred that the matter was coming up for hearing on 15th March 2021 when the applicant and his advocate went to the court premises but found the gate closed due to the death of one of the judicial staff. Upon inquiring at the registry, they were informed that the matter had been dismissed for want of prosecution. The applicant avers that he is keen to prosecute his application hence he prays that the same be reinstated.

2. The respondent has opposed the application averring that when the matter was called out, counsel for the applicant was not in attendance hence the matter was dismissed for want of prosecution. It is also averred that there was no indication that the matter would be heard physically and no notice was issued relating to the closure of court business.

3. I find that Section 3A of the Civil Procedure Act provides for the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. The court has discretion to set aside a judgment or order. The exercise of this discretion is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice; See- **Shah vs Mbogo & Another (1967) EA 116.**

4. This court is well aware that due to the Covid 19 pandemic, matters before this court are usually conducted in the virtual platforms unless the matter is scheduled for full hearing.

5. I have had a chance to peruse the cause list for matters scheduled on 15.3.2021 (a copy of which is now placed in the court file). The same indicates that matters listed as number 1 – 10 which were mentions, applications and submissions were to be heard via Microsoft, no's 11-14 were full hearings in open court, while no. 15 was a ruling delivered via email. The current matter was listed as number 6 amongst other applications which were conducted via Microsoft Teams.

6. The cause list is usually sent online to advocates in advance. The applicants don't dispute that they received this cause list. Indeed they are the ones who effected service of the date upon the respondent's advocates.

7. In light of the foregoing, I am not persuaded by the applicants claim that they were unable to access court. In the circumstances, I find that the application dated 8.4.2021 is unmerited. The same is hereby dismissed with costs to respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 14TH DAY OF JULY, 2021 IN PRESENCE OF:

C/A: Kananu

Mbaabu for defendant

Mwanzia for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE