

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 419 OF 2015 (OS)

LYDIAH WAMBUI MUKUHA.....PLAINTIFF

=VERSUS=

WAIGANJO MUKUHA.....DEFENDANT

RULING

1. Before me is a notice of motion dated 12.3.2021 where the Plaintiff/ Applicant is seeking for reinstatement of the suit which was dismissed on 11.11.2020. The Applicant contends that prior to the date of dismissal, she had filed an application in September 2017 seeking orders to serve the Respondent through substituted service in the Daily Newspaper as the Respondent could not be traced. However, this turned out to be a futile exercise as the court file was apparently lost.

2. The Applicant had then filed the relevant documents for reconstruction of the court file but before further directions could be given, a notice to show cause was issued without her knowledge and the matter was dismissed.

3. The main issue for determination is whether this court should reinstate this suit which was dismissed on 11.11.2020. The decision whether a suit should be reinstated for trial is a matter of justice and discretion. It all depends on the facts of the case; See **Mwangi S. Koimanyi v Attorney General & Another (2014) eKLR**.

4. In the case of **John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation) [2015] eKLR** Justice Gikonyo held that;

“The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of the Constitution. Article 50 coupled with article 159 of the Constitution on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such matter of reinstatement of a suit which has been dismissed by the court.....”

5. A perusal of the record reveals that after the matter was filed in court in the year 2015 the court file got lost, apparently after a last appearance in court on 26.7.2016. The Applicant did file an application to have the court file reconstructed. There is also an application dated 4.9.2017 seeking orders to serve the pleadings upon the Respondent via substituted service. The Applicant contends that this application was not successfully filed and prosecuted due to the issue of the missing court file.

6. What is clear in this matter is that the issue of the missing court file persisted for a lengthy period and this hampered the effective administration of justice in this case, such that the Respondent has never been in the picture from the word go. It is therefore in the interest of justice that the suit be reinstated. The application dated 12.3.2021 is allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF SEPTEMBER, 2021

LUCY N. MBUGUA

JUDGE

IN the presence of:-

M/s Maina holding brief for Mr. Mbigi for the Plaintiff

Court Assistant: Edel Barasa