



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 38 OF 2019**

**PHILIP MELI RONO.....PLAINTIFF**

**VERSUS**

**JOHN CHEBAI MWELA.....1<sup>ST</sup> DEFENDANT**

**KENETH SAISI MUDAKI.....2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR, TRANS NZOIA.....3<sup>RD</sup> DEFENDANT**

**RULING**

**The Application**

1. This is a Ruling of a Notice of Motion dated 26/5/2021 and filed in court on 27/5/2021 brought under **Article 50** and **159** of the **Constitution** and **Order 12 Rule 3** and **7**, **Order 51 Rule 15** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**. The plaintiff sought the following orders in his application:

- (1) ...spent
- (2) That the order of this honourable court made on the 26/5/2021 dismissing the suit for non-attendance by the plaintiff and his advocate with all consequential orders be reviewed, varied, set aside and/or vacated.
- (3) That the main suit filed in this suit on the 30/4/2019 be reinstated.
- (4) That such other and/or further order do issue in the interests of justice.
- (5) That cost of this application be provided for.

2. The application is supported by the affidavit sworn on 26/5/2021 by the plaintiff's counsel. The grounds upon which the application is made are that the suit was before the dismissal pending final determination by this court; that the subject matter of this suit and the real controversy between the parties herein has not been settled; that the plaintiff was not aware of the intention of the court to dismiss this matter; that the plaintiff did not attend court for the hearing of this matter because of matters beyond his control and failure to attend the hearing of the matter was not intentional; that the plaintiff shall suffer great and irreparable damage if the instant application is not allowed; that the defendants will suffer no prejudice at all upon grant of the orders sought herein and that it is only fair and in the interests of justice that the application be allowed.

**The Response**

3. The instant application is unopposed.

**The Submissions**

4. No submissions were filed on behalf of the parties.

**Determination**

5. I have considered the application.

6. The genesis of the instant application is that the instant suit was dismissed for want of prosecution on **25/5/2021** when all the parties failed to attend court.

7. The plaintiff avers that the failure to attend court was not intentional and the defendant has not risen to aver the contrary. It is the normal approach by this court that disputes before it should as far as is possible be resolved by way of hearing on merits. I think the plaintiff has by his affidavit demonstrated that the failure to attend court was inadvertent and he should be given a second chance to ventilate his grievance against the defendants.

8. For the foregoing reasons I find that the application dated **26/5/2021**, which was filed only one day after the dismissal order was made, has merit and it is hereby granted as prayed in **prayers nos (2) and (3)** thereof. The costs of the application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 22ND DAY OF SEPTEMBER, 2021.**

**MWANGI NJOROGI**

**JUDGE, ELC, KITALE.**