



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1639 OF 2007**

**(FORMERLY HCCC NO 1167 OF 2005)**

**BENSON CHEGE WERU.....PLAINTIFF**

***(Suing as the administrator of the estate of WERU KABUKU) deceased***

**=VERSUS=**

**DAVID MWANGI WERU.....1<sup>ST</sup> DEFENDANT**

**NGUGI NJUGUNA.....2<sup>ND</sup> DEFENDANT**

**EDWARD NDUNG’U MBUGUA.....3<sup>RD</sup> DEFENDANT**

**ALICE NJERI MUNJI.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 10<sup>th</sup> December 2020 brought under section 1A, 1B and 3A of the Civil Procedure Act (Cap 21) Laws of Kenya, order 51 rule 1 of the Civil Procedure Rules, article 159 (2) (d) of the Constitution, 2010 and all other enabling provisions of the law.

2. It seeks orders:-

***1. That the honourable court be pleased to vacate its orders of 16<sup>th</sup> December 2011 and reinstate the plaintiff’s suit on such terms as are just.***

***2. That the costs of this application be provided for.***

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

4. The application is supported by the affidavit of Benson Chege Weru the plaintiff/applicant herein sworn on the 10<sup>th</sup> December 2020.

5. 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 paragraph 4 of the supporting affidavit, the plaintiff depones;

***“That I have bene informed by my advocates previously on record which information I verily believe to be true that their offices were accidentally destroyed by fire”.***

However, there is no affidavit from the said Advocate of confirm the above averments.

8. This application has been brought after an inordinate delay. There is no evidence faulting the service of the notice to show cause by the

court and there is no evidence on record to suggest that service was improper.

9. I am guided by the case of **Utalii transport Co. Ltd & 3 Others vs NIC Bank & Another [2014] eKLR** where Gikonyo J stated as follows:-

***“.....the court held that it is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court. The decision on whether the suit should be reinstated for trial is a matter of justice and it depends on the facts of the case.***

***.....I find this application has no merit and I dismiss it with no orders as to costs as it was undefended”.***

The plaintiff/applicant herein has not demonstrated any justifiable reason to warrant this court to exercise discretion in his favour.

10. 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 28TH DAY OF OCTOBER 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Paul Njihia for the Plaintiff

No appearance for the Defendants

Steve - Court Assistant