



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. 132 OF 2016

ALEX SAMMY KILONZO.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KITUL.....DEFENDANT

RULING

1. In the Application dated 10th March, 2021, the Plaintiff has prayed for the following orders:

a) That this Honourable court be pleased to set aside and or vary the order issued on the 28th February, 2019 dismissing the suit herein for want of prosecution thereto.

b) That this Honourable court be pleased to re-instate the suit herein so that it can be heard and determined on merit.

c) That the costs of this application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he instructed the firm of O.N Makau and Mulei Co. Advocates to take conduct of this matter on his behalf and file a Complaint and an Application for injunctive orders.

3. The Plaintiff deponed that the Complaint in this matter was duly filed on 28th September, 2016; that the Notice of Motion for injunctive orders was also filed but was later on withdrawn on 29th March, 2019 and that the court issued pre-trial directions on 1st May, 2019.

4. It was deponed by the Plaintiff that he has been advised by his advocate that the matter was dismissed for want of prosecution by the court on 28th February, 2019 and that the notice leading to the dismissal of the suit was due to non-attendance by the advocate who had conduct of the matter and who is no longer working in the law firm of O. N. Makau and Mulei Company Advocates.

5. It was deponed that although it was true that the last action was taken on 1st May, 2017, the failure to prosecute the matter was caused by lack of due diligence by the advocate who was handling the matter on behalf of the firm thus occasioning advocate's the non-attendance to prosecute the matter on his behalf. According to the Plaintiff, the actions of his former advocate should not be visited on him. The Defendant did not file a response to the Application.

6. This suit was commenced by way of a Complaint dated 26th September, 2016. Together with the Complaint, the Plaintiff filed a Notice of Motion dated 28th September, 2016. The said Application was withdrawn on 29th March, 2017. On the same day the Application was withdrawn, the court directed that the matter to be mentioned on 1st May, 2017 for pre-trial directions. The record shows that the matter was not mentioned on the said date, or on any other date.

7. The record shows that the court served the Plaintiff's advocate with the Notice to show cause why the suit should not be dismissed for want of prosecution. The said notice came up for hearing on 28th February, 2019. However, neither the Plaintiff nor his advocate were present on that day. The Plaintiff's suit was dismissed by the court for having failed to prosecute the suit for more than one (1) year.

8. The Plaintiff has deponed that the failure to prosecute the matter was caused by lack of due diligence by the advocate who was handling the matter on behalf of the law firm thus occasioning the non-attendance to prosecute the matter on his behalf. According to the Plaintiff, the actions of his former advocate should not be visited on him.

9. The Plaintiff's attempts to blame the counsel who was handling the matter for the dismissal of the suit cannot pass. I say so because the responsibility to ensure that a suit is prosecuted timeously is always with the litigant. It was upon the Plaintiff to check on the position of the suit and prompt his advocate to fix the matter for hearing.

10. Considering that the Plaintiff has not offered an explanation as to why he did not prompt his advocates to fix the matter for hearing before the lapse of one year, and having not offered any plausible explanation why the matter stayed in abeyance for more than one year, I find the Application dated 10th March, 2021 to be unmeritorious.

11. For those reasons, I dismiss the Application dated 10th March, 2021 with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 22ND OCTOBER, 2021.

O. A. ANGOTE

JUDGE

In the presence of:

Ms Kamene for the Plaintiff

N/A for the Defendant

Court Assistant – John Okumu