



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELC 298 OF 2017

JOSHUA KIPRONO.....PLAINTIFF/APPLICANT

VERSUS

MARY WANJIKU MUGO.....DEFENDANT/RESPONDENT

RULING

Application

1. The petitioner moved the court through a notice of motion dated **11/8/2021** brought under **Section 1A, 2A and 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Rules, 2010 and Order 12 Rule 7** seeking the following orders:

(1) THAT the Honourable Court be pleased to reinstate the plaintiff's suit herein and set aside all other consequential orders emanating therefrom.

(2) THAT the Honourable Court be pleased to allow the plaintiff to prosecute the case from where it had stalled and/or impeded upon granting prayer (1) above.

(3) THAT the costs of this application be in the cause.

2. The application is supported by the affidavit sworn on **11/8/2021** by Lucy Nekesa Cheloti where she deposed that the suit was filed on **17/7/2017**; that the matter came up in court on several occasions and on **30/9/2019** they moved the court vide a **Miscellaneous Application 195/2019** wherein a ruling was delivered on **6/3/2020** dismissing the said application.

3. She further deposed that vide a letter to the court dated **10/2/2021** she requested to have the matter listed for mention for direction which letter was received on **17/2/2021**; that it was encumbered upon the honourable court's officers to allocate the matter a date which obligation is never within his direct control; that since then, they have been waiting for the matter to be fixed for mention only to later realize that upon perusal of the court file the matter came up in court on **8/3/2021** for notice to show cause when the same was consequently dismissed in their absence notwithstanding their letter dated **10/2/2021** which remained unaddressed.

4. She went on to depose that they were never served with any Notice to show cause and as such, they were not aware of the matter coming up in court; that she has never been informed of any proceedings in the matter notwithstanding the fact that their firm has all along been on record for the plaintiff and that the plaintiff has a tenable case and is keen to prosecute this matter.

5. She finally deposed that from the pleadings and in eventuality the transpiration that culminated the failure to attend court on the respective dates was occasioned by circumstances not within their control; that the defendant will not be prejudiced if the application herein is allowed; that this court sets aside the dismissal orders and in the alternative reinstates the plaintiff's suit.

Response

6. The respondent did not file any response to the application.

Submissions

7. Upon perusal of the file I found that the plaintiff filed his submissions on **9/11/2021** but the respondent who was served with the instant application as per the affidavit of service filed by the applicant on **9/11/2021** filed none.

Determination

8. It is my opinion that the only issue for determination is whether the plaintiff/applicant is entitled to the orders sought.

9. I find that the application dated **11/8/2021** is not opposed by the defendant and having perused the grounds for the application I find that it has merit.

10. Consequently I grant the application as prayed in prayers no **(1)** and **(2)** thereof. The costs of the application shall be in the cause. The parties shall comply with the rules and appear before court on **9/12/2021** for the fixing of a hearing date.

Dated, Signed and Delivered at Nakuru via electronic mail on this 10th day of November, 2021.

MWANGI NJORGE

JUDGE, ELC, NAKURU.