



**Munyui v Mungai t/a MG Auto Trading (Civil Case 374 of 2014)
[2024] KEHC 13722 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 374 OF 2014
TW OUYA, J
NOVEMBER 5, 2024**

BETWEEN

PAUL GATIMU MUNYUI PLAINTIFF

AND

SAM GITAU MUNGAI T/A MG AUTO TRADING RESPONDENT

RULING

1. Vide Notice of Motion dated 18th June, 2024, the plaintiff/Applicant through his advocates Gachoka Mwangi made an application for re-instatement of Civil Suit No 374 of 2014.
2. The matter was before court on 5/11/2024 where counsel for the plaintiff made oral submissions.
3. The suit was initiated by way of plaint was filed on the November 2014 which plaint was later amended in the same year.
4. The matter has been pending in the court system without action until 6th December 2019 when the court issued notice to show cause why the case should not be dismissed and a notice of hearing for 3rd August 2022. The same was served on the plaintiff/Applicant's Advocate's Gachoka Mwangi and company and defendant's advocates Gesani and Maina Co advocates both by mail to their last known address on 24th August 2022.
5. Affidavit of service dated 14th September 2022 was filed by Ms. Martha Wangare a court Bailiff indicating the plaintiff's advocate's address as Gachoka Mwangi & Co. Advocates Victoria Court, Tom Mboya Street, 1st Floor, Room 3, P O Box 8800 -00100 Nairobi.
6. The matter came up for Notice to show cause on 13th October 2022 before Hon. J.k Serгон J and there was no attendance by plaintiff and defendant. The same was dismissed under Order 17 Rule 2 (1) of the Civil Procedure Rules.



7. The application for re-instatement is supported by the affidavit sworn on 18th June 2024 by Gachoka Mwangi, Counsel for the plaintiff.
8. Counsel submitted that they made an application on the 15th February 2022 to transfer the file to Kiambu Magistrates Court. The same is not in the file and no evidence is attached.
9. Counsel states that they did not take action because the file had gone missing and that is why there was no action on the matter. There is no evidence to support the allegations that the file had gone missing. Even when a file goes missing there is option for reconstruction. There is no evidence that counsel moved the court for reconstruction of the file.
10. Counsel was effectively served with the Notice to Show Cause and affidavit of service filed.
11. At the time of dismissal, the matter was 8 years old. Counsel has not demonstrated any justifiable cause for the matter to be reinstated.
12. For the above reasons application is not allowed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF NOVEMBER, 2024

ROA 14 days.

HON. T. W. OUYA

JUDGE

FOR APPELLANT Gachoka

FOR RESPONDENT No Appearance

COURT ASSISTANT Martin

