



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO.129 OF 2015

CHESTER HOUSE LTD.....PLAINTIFF

-VERSUS-

THE CHIEF SECRETARY, STATE DEPARTMENT OF

ENVIRONMENT, WATER & NATURAL RESOURCES.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

1. The Applicant's Notice of Motion is dated 23/11/2020. It is brought under Sections 3A and 63 of the Civil Procedure Act, Order 51 of the Civil Procedure Rules and all enabling provisions of the Law.
2. The Applicant seeks the reinstatement of the suit herein that was dismissed on 2nd November, 2020 by Hon. Thande, J for non-attendance of the Plaintiff or his Counsel.
3. The Hon. Attorney General for the Defendants/Respondents did not attend the hearing despite being served with the application and a hearing notice.
4. Mr. Ongeri for the Plaintiff submitted that when the matter came up for hearing on 14th April, 2020, both parties were present but the Hon. Attorney General had not complied with Order 11 as regards Case Management. A date for Case Management Conference was given before the Hon. Deputy Registrar on 29/6/2020 but on this date, the Hon. Deputy Registrar was not sitting. Counsel for the Plaintiff later learnt that the matter had been placed before the Hon. Judge without the party's Notice. The Hon. Judge then dismissed it for want of attendance by the Plaintiff or his Counsel.
5. The averments are also borne in the Supporting Affidavit of David Orange, Counsel for the Plaintiff sworn on 23/11/2020.
6. I have considered the application, the submissions by Counsel for the Applicant and the court record. It is clear that the Plaintiff or Counsel for the Plaintiff were not notified of the date the matter was placed before the Hon. Judge. Hence, the non-attendance was not deliberate.
7. A suit can only be dismissed on the clearest of a situation that demonstrates deliberate abandonment of proceedings or for other facts such as indolence on the part of a Respondent. Each case must however be considered on its own merit.
8. In the circumstances that the Plaintiff's Counsel or the Plaintiff itself failed to attend court were convincing and beyond its control. Notice to the party was the only means by which it (Plaintiff) would have known that the matter had shifted from the Hon. Deputy Registrar to the Hon. Judge.
9. In the circumstances, the Plaintiff's application is merited. The same is allowed with no orders as to costs. There shall be a mention before the Hon. Deputy Registrar on 19/7/2021 to confirm compliance with Case Conference Management. Mention Notice to issue.

DATED AND DELIVERED AT NAIROBI THIS 7TH JUNE, 2021.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Mr. Ongeru h/b for Mr. Orege for the Plaintiff/Applicant
2. No appearance for the Defendant