



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC CASE NO. 284 OF 2011

GODFFREY GITAHU KEEN.....PLAINTIFF

VERSUS

RUTH MONTHE IVULU.....DEFENDANT

RULING

1. In the Notice of Motion dated 1st November, 2018, the Plaintiff is seeking for the following reliefs:

a. This Honourable Court do review its orders made on the 28th September, 2018, dismissing the Plaintiff's suit for non-attendance, set aside the said orders, re-instate the suit and set same for hearing under directions as it may deem it fit to direct.

b. The Honourable Court do make further orders under Order 11 of Civil Procedure Rules 2010.

c. Costs of this Application be in the cause.

2. According to the Affidavit of the Plaintiff, the suit was transferred from Machakos to Nairobi; that while the matter was pending in Nairobi, his advocate took several steps to have it ready for hearing and that subsequently, the file was transferred from Nairobi to Machakos.

3. The Plaintiff deponed that his advocate tried to set the matter down for hearing in May, 2018 but was informed that the court diary was full; that on 15th September, 2018, he was surprised when he was informed that the suit had been dismissed for want of prosecution and that no one will suffer prejudice if the suit is reinstated.

4. The Defendant deponed that since the file was transferred from Nairobi to Machakos, the Plaintiff did not take any step to set down the matter for hearing; that the Plaintiff has never invited his advocates to fix the matter for hearing and that the Notice for dismissal of the suit was served by the court on both parties.

5. The Defendant finally deponed that the Plaintiff did not adduce evidence to prove the attempts he made to set the matter down for hearing and that the Plaintiff has not given a good reason why he failed to prosecute the matter.

6. I have considered the Defendant's submissions and authorities. The Plaintiff's submissions are not on record.

7. This suit was initially filed in this court on 12th October, 2011. Due to the absence of an Environment and Land Court Judge in Machakos, the file was transferred to Nairobi in the year 2013 and allocated a reference number 1241 of 2013 (*Nairobi*). However, the file was re-transferred to Machakos on 5th March, 2018.

8. Indeed, the record shows that the last time the matter was in court while in Nairobi was on 5th March, 2018 when Okong'o J., on his own Motion, transferred the file back to Machakos. The Notice to show cause why the suit should not be dismissed for want of prosecution is dated 27th August, 2018.

9. The Advocates for the Plaintiff and the Defendant were served with the Notice to Show Cause which came up for hearing on 28th September, 2018. On the said date, it is only the Defendant's advocate who appeared in court. The court proceeded to dismiss the suit for want of prosecution.

10. Indeed, the last time the matter was in court at the behest of the Plaintiff was on 20th September, 2016 when the Plaintiff's advocate informed the court that the matter was not ready for hearing. On the other hand, the Defendant's advocate informed the court that the Defence had complied with pre-trial documents.

11. Considering that the Plaintiff or his advocate never took a step to fix the matter for hearing since the year 2016, and in the absence of evidence to show that the court file was missing between the year 2016 and 2018, I find that the Plaintiff has not given any good reason to warrant the reinstatement of the suit. In fact, the Plaintiff or his advocate have not explained why they were not in court on 28th September, 2018 to show cause why the suit should not be dismissed for want of prosecution, and the Plaintiff's advocate has not denied by way of an Affidavit that he was served with the Notice to Show Cause. I therefore find the Application dated 1st November, 2018 to be unmeritorious.

12. For those reasons, I dismiss the Application dated 1st November, 2018 with costs. For avoidance of doubt, the suit stands dismissed as ordered on 28th August, 2018.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JANUARY, 2020

O. A. ANGOTE

JUDGE