

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 22 OF 2015

SAMMY MUTUA MUSWIL.....PLAINTIFF

VERSUS

NJOKI ELIZABETH WAMBUGU.....DEFENDANT

RULING

1. In the Notice of Motion dated 18th January, 2019, the Plaintiff is seeking for the following orders:

a. The Honourable Court be pleased to set aside its own orders made on the 2nd July, 2019.

b. The Plaintiff's Application dated 6th June, 2019 be reinstated for hearing and determination on merit.

2. The Application is supported by the Affidavit of the Plaintiff's advocate who has deponed that this suit was fixed for hearing of the Application dated 6th June, 2019 on the 2nd July, 2019; that their clerk misdiarized the matter as coming up for hearing on 3rd July, 2019 and that when she attended court on 3rd July, 2017, she realized the matter was not cause-listed.

3. The Plaintiff's advocate finally deponed that the failure to attend court on 2nd July, 2019 was entirely a mistake on her office.

4. The Plaintiff's Application was not opposed.

5. This suit was struck out by the court by way of a Judgment dated 24th May, 2015. The Plaintiff then filed an Application dated 6th June, 2019 seeking to review the Judgment of the court. When the Application came up for hearing on 2nd July, 2019, neither the Plaintiff nor his advocate were in court. The court dismissed the Application for want of prosecution.

6. The Plaintiff's advocate has deponed in her Affidavit that the reason why she did not attend court on 2nd July, 2019 was because the clerk had diarized the Application for 3rd July, 2019 instead of 2nd July, 2019. The extract of her diary shows that indeed the Application was diarized for hearing on 3rd July, 2019.

7. The Plaintiff's advocate's reason for not attending court on 2nd July, 2019 was due to an inadvertent *bona fide* error on her part. I shall therefore exercise my discretion in her favour by allowing the Application.

8. For those reasons, I allow the Application dated 18th July, 2019 as prayed.

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

O.A. ANGOTE

JUDGE