



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 621 OF 2015 (O.S)

(FORMELY HCC 143 OF 2012)

LAWRENCE KARUIKI KARANJA alias GEOFFREY MBURU.....PLAINTIFF

VERSUS

LAWRENCE KAGAI KARIUKI.....DEFENDANT

RULING

Lawrence Kariuki Karanja alias Geoffrey Mburu (hereinafter referred to as the applicant) has come before this court with application dated 28/8/2019 seeking orders that this court reviews vacates or sets aside the order dated 25/7/2019. Moreover that this court stays the proceedings herein pending the hearing of the Succession Cause no. 892 of 1994 and Succession Cause number 236 of 1994. According to the applicant he filed a notice to act in person and was never served with any pleadings. It had been agreed that the matter be stayed pending the outcome of Nakuru High court Succession cases no. 892 of 1994 and 236 of 1994. The consent has never been set aside. No proceedings could ever been made. The court did not have any physical address of the applicant.

The Respondent states that the firm of Juliet Dima is not properly on record as the applicant has been acting in person. There is no notice of appointment of advocate. According to the respondent the notice to show cause was served by the court. Moreover, the respondent contends that the Succession Cause was determined on 6/10/2013. The applicant was aware of the determination of Succession came but kept to court in darkness. I have heard both parties.

To begin with it was un-procedural to proceed with the notice to show cause when there was a consent for stay of proceedings pending the outcome of the succession cause, in Nakuru. Dismissal for want of prosecution cannot be granted where there is stay of proceedings.

Though the plaintiff's counsel has not filed a notice of appointment of advocate, this court observes that no party should be allowed to benefit where the court makes apparent error on the face of record in its presence but the party does not assist the court. In this case, there is an apparent error on the face of record whereby the court granted stay of proceedings and also dismissed the case for want of prosecution. For the above reasons, I do find that the court can grant orders *ex debito Justitiae* to rectify the court record.

I do act *ex debito Justitiae* and set aside the order made on 20/3/2017 dismissing the suit for want of prosecution. I do further set aside all resulted proceedings. Each party to bear own costs. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 30TH DAY OF January, 2020.

In the presence of:

MR OMONDI T FOR RESPONDENT

M/S DIMA FOR APPLICANT

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE