



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 260 OF 2014

JOSEPH HINGA.....1ST PLAINTIFF

JACINTA GATHONI.....2ND PLAINTIFF

ISAAC KARIUKI.....3RD PLAINTIFF

VERSUS

JOHN TIROP.....DEFENDANT

RULING

1. The Plaintiffs moved the court through the Motion dated 21st March, 2019 seeking for the setting aside of the Order of 7th March, 2019, and reinstating the suit for hearing and determination. The application is based on the five (5) grounds on the face, and supported by the affidavit sworn by Omollo H. Aseso Advocate, on the 21st March, 2019. It is the Plaintiffs' case that the matter had not been cause-listed on the date it was dismissed or non-attendance. That the dismissal order should be set aside, and the suit reinstated for hearing and determination.

2. The application is opposed by the Defendant through the replying affidavit sworn by Zephania K. Yego Advocates. It is the Defendant's case that the Plaintiffs had served them with a hearing notice dated 22nd August, 2018 and they in turn served the Plaintiff with a reminder hearing notice dated the 5th October, 2018 all for 7th March, 2019. That the Plaintiffs did not attend court on the 7th March, 2019, and have not offered tangible explanation. That even if the matter was not cause-listed, the practice is for Counsel to bring the matter to the attention of the registry. That the court's discretion should not be used to assist indolent parties who are evasive or otherwise out to obstruct or delay the course of justice.

3. When the application came up for hearing on the 23rd January 2020, Mr. Kandie for Yego for the Defendant and Mr. Aseso for the Plaintiffs relied on their respective documents in relation to the application.

4. The issues for determination are as follows:

(a) Whether the Plaintiffs have made a reasonable cause for the dismissal order to be set aside and suit reinstated.

(b) Who pays the costs?

5. The court has after considering the grounds on application, affidavit evidence by both sides and the record come to the following determinations;

(a) That both the Plaintiffs and Defendant are in agreement that the suit was set for hearing on the 7th March, 2019, and that the Plaintiffs and their Counsel did not attend. That the record confirms that the hearing date had been fixed on the 31st July, 2018.

(b) That it is also not disputed, and is actually confirmed by the record, that the Plaintiffs' suit was dismissed on the 7th March, 2019 for reason of their non-attendance.

(c) That the explanation given by the Plaintiffs for their non-attendance is that the suit had not been cause-listed for that day. The Plaintiffs have annexed that day's cause list and its contents has not been challenged. That the cause list confirms that this suit was not among the six (6) matters cause-listed before this court for the 7th March, 2019. That explanation is reasonable under the circumstances.

(d) That this application was filed on 21st March, 2019 which is precisely fourteen (14) days after the dismissal order. The court therefore finds that the Plaintiffs acted without undue delay to move the court upon finding that their suit had been dismissed.

(e) That as the Plaintiffs have presented a reasonable explanation as to why they did not attend the court on that hearing date, the costs of the application will be in the cause.

6. That flowing from the foregoing, the court finds merit in the motion dated, and filed on the 21st March, 2019 and orders as follows:

(a) That the order of 7th March, 2019 dismissing the Plaintiffs' suit for non-attendance is hereby set aside.

(b) That the Plaintiffs' suit is hereby reinstated for hearing and determination.

(c) The costs be in the cause.

It is so ordered.

Dated and signed at Eldoret this 12th day of February, 2020.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

Mr. Aseso for Plaintiff also holding brief for Baraza for 4th Defendant in Counterclaim.

Mr. Bett for Aseso for Defendant.

Court Assistant: Christine