



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 205 OF 2012

CECILY KARIMI MBAKA.....PLAINTIFF

VERSUS

GRACE MWITHI MAUNDU..DEFENDANT

RULING

1. In the undated Notice of Motion filed on 18th July, 2019, the Plaintiff is seeking for the setting aside of the orders of 30th May, 2019 dismissing the suit for non-appearance and for want of prosecution.
2. The Application is supported by the Affidavit of the Plaintiff's advocate who has deponed that the parties herein have been negotiating the matter with a view of settling the matter out of court.
3. According to counsel, when this matter came up for hearing on 19th November, 2018, the Plaintiff was present in court and was ready to proceed; that the Defendant's counsel was not ready since he had just been appointed to come on record; that when the matter came up for hearing on 7th February, 2019, he was ready to proceed and that once again, the Defendant's advocate applied for adjournment, which adjournment was granted.
4. Counsel deponed that on 29th May, 2019, a day before the hearing date of 30th May, 2019, he received two letters, one from the firm of Maosa & Co. Advocates, stating that he will not be in a position to proceed with the hearing because he was bereaved, while the second letter was from the firm of Maumo & Co. Advocates which stated that he had just been instructed to come on record and would be applying for adjournment.
5. Counsel deponed that he therefore advised his client not to travel from Thika to Machakos for the said hearing; that he sent his representative to court on 30th May, 2019 and that the court declined to adjourn the matter.
6. The Plaintiff's counsel finally deponed that the Plaintiff is ready and willing to abide by any conditions imposed by this court for the prosecution of the matter to its logical conclusion and that it is only fair and in the interest of justice that this suit be reinstated and be heard to conclusion. The Application was not opposed.
7. The record shows that between the year 2015 and 2018, the Plaintiff never fixed this matter for hearing. When the court served the Plaintiff's advocate with a Notice to show cause why the matter should not be dismissed, the advocate pleaded with the court to grant her an opportunity to prosecute the suit. That was on 2nd March, 2018.
8. When the matter came up for hearing on 26th September, 2018, the Plaintiff's advocate informed the court that she had agreed with the Defendant to settle the matter out of court. The Application for adjournment was allowed and the court granted to the parties the last adjournment. The matter was then fixed for hearing on 19th November, 2018.
9. On 19th November, 2018, the Defendant's advocate applied for adjournment because he had just been instructed. On the said date, the court granted to the Defendant "*the very last adjournment*". The matter was then slated for hearing on 7th February, 2019. The Defendant was granted, once again, "*very last adjournment*" when her advocate informed the court that he needed time to file written statements.
10. When another attempt was made by the Plaintiff's advocate to adjourn the matter on 30th May, 2019 on the ground that the Defendant's advocate was bereaved, the court declined to adjourn the matter.

11. The reasons that the Plaintiff is advancing now for the reinstatement of the suit are not plausible. Indeed, in its Ruling of 30th May, 2019, the court listed the many adjournments that it had granted to the parties herein. In its penultimate paragraph, I stated as follows:

“In view of the age of the matter and the many adjournments, I decline to adjourn the matter anymore...”

12. No good reason has been given to me to review my order of 30th May, 2019. The fact that the court considered to dismiss the suit on its own Motion on 2nd March, 2018, which it did not do, shows the latitude the court granted to the Plaintiff in the prosecution of the matter. Any more latitude will simply put this court into disrepute.

13. For those reasons, I dismiss the Application dated 18th July, 2019 with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 7TH DAY OF FEBRUARY, 2020

O.A. ANGOTE

JUDGE