



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC 43 OF 2019 (O.S)**

**FORMERLY CIVIL SUIT NO. 15 OF 1991 (O.S)**

**IN THE MATTER OF LIMITATIONS OF ACTIONS ACT CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE APPLICATION BY**

**SARA ANYISO MARTINS.....PLAINTIFF/APPLICANT**

**VERSUS**

**SHYAM SING BANSAL BANSI RAM.....DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff/Applicant prays for an order for the honourable court setting aside of the orders made on 27/9/2017 dismissing the suit for want of prosecution and thereby reinstating the suit. The application is made on grounds that the Applicant was never informed of the said date when parties were required to appear before court and show cause why the matter should not be dismissed for want of prosecution. The then Applicant's Advocate on record; M/s M. c. Ouma had indicated to the applicant on several occasions that the file was untraceable hence he was unable to set the matter down for hearing. The applicant being uneducated and oblivious of the legal procedures and technicalities believed the word of her advocate and remained patient awaiting further directions. On realizing that there was no update emanating from her then advocate on record, who insisted on the file being untraceable, the Applicant decided to seek assistance from the firm of M/s Otieno Yogo Ojuro & Co. Advocates for follow up on the matter. The said firm took up the matter from M/s Odhiambo Ouma and immediately commenced the search of the file at the registry. The applicant is still in possession of the suit property to date. It is therefore in the interest of justice that this Honourable Court allows this application as prayed in order to afford the Applicant her day in court.

That in all the circumstances of this case, for the ends of justice to be met and the Honour and dignity of this Honourable Court to be upheld, the Orders sought in this application ought to be granted.

The application is opposed on grounds that the Respondent is suffering irreparable loss occasioned by the delay and conduct of the Applicant. The Applicant removed all the Tenants of the Respondent and has since then refused to reinstate them despite the fact that the order granting adverse possession to the Applicant was set aside. The Applicant is unjustly using the suit property as a means of livelihood. The issue of irreparable damage suffered by the Applicant if the application is not granted cannot arise as the Applicant has benefited from the monthly rental immensely.

I have considered the application and do find that the suit was dismissed for want of prosecution on 27/9/2017. The Originating Summons was filed on 16/1/1991. The applicant blames the failure to prosecute the case on her advocate and her ignorance of the law. This court finds that the plaintiff has not shown that she had any serious interest in the matter before it was dismissed in 2017.

Moreover, it took for almost 2 years to realize that the suit had been dismissed. I do find it inordinate delay to come to court after 2 years.

However, the applicant ought to have been given an opportunity to be heard before dismissing the suit for want of prosecution. It is not clear whether the applicant's advocate was served with the notice to show cause. The notice to show cause was served upon Kasamani & Co. Advocates instead of Odhiambo Ouma & Company.

The upshot of the above is that I do exercise my discretion by allow the application and the suit is reinstated for hearing and determination on merit.

Costs in the cause.

**DATED AND DELIVERED THIS 13th DAY OF MARCH, 2020.**

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**In the presence of:**

M/S Martins for Yogo for applicant

Mr Odhiambo for respondent