



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 169 OF 2014**

**WISDOM PROPERTY AGENCIES LIMITED.....PLAINTIFF**

**VERSUS**

**KEZIAH MUMBI PAUL.....1<sup>ST</sup> DEFENDANT**

**FRANCIS MWANZIA MULWA.....2<sup>ND</sup> DEFENDANT**

**KITANGILA LIMITED.....3<sup>RD</sup> DEFENDANT**

**CHIEF REGISTRAR OF TITLES.....4<sup>TH</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MACHAKOS .....5<sup>TH</sup> DEFENDANT**

**NIRISH CHADUNLAL SHAH.....6<sup>TH</sup> DEFENDANT**

**MAVOKO SUB COUNTY.....7<sup>TH</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....8<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Application dated 15<sup>th</sup> July, 2019, the Plaintiff is seeking for the following orders:

- a. That leave be granted to the firm of Muma & Kanjama Advocates to come on record for the Plaintiff in place of Kangori & Company Advocates.*
- b. That the order of the Honourable Justice O. Angote issued on 28<sup>th</sup> February, 2019 dismissing the suit herein together with all other consequential orders be reviewed varied and/or set aside.*
- c. That the suit filed on 17<sup>th</sup> November, 2014 be reinstated for expeditious hearing and determination by this Honourable Court.*
- d. That this suit be consolidated with Machakos ELC. Case No. 162 of 2015 and Machakos ELC. No. 282 of 2012.*

2. The Application is supported by the Affidavit of the Plaintiff's Director who has deponed that his previous advocate, Kangori and Company Advocates, never received the Notice to show cause why the suit should not be dismissed for want of prosecution; that as a result of non-service of the notice, the Applicant was denied an opportunity to show cause why the suit should not be dismissed and that the mistake of counsel should not be visited upon his client.

3. The Plaintiff's Director deponed that the suit land in this suit is similar to the suit land in Machakos ELC. No. 162 of 2015 and ELC. No. 282 of 2012, Machakos; that the suits raise similar questions of fact and law and that the suits arise from the same set of facts and evidence that involve the same parcel of land being L.R. No. 10426/7 and its adjacent sub-divided properties.

4. The Plaintiff's Director finally deponed that it is in the interest of justice and expeditious disposal of these matters that the suits should be consolidated and be heard together and that the order for dismissal of this suit was made without any fault of the Applicants.

5. The Application by the Plaintiff was not opposed. The Applicant did not file submissions but relied on his Affidavit.
6. This matter was filed in the High Court at Machakos in the year 2014. Due to the absence of an Environment and Land Court Judge in Machakos, the file was transferred to Nairobi before it was re-transferred to Machakos on 14<sup>th</sup> April, 2017.
7. From the record, the Plaintiff did not fix the matter for hearing or pre-trial. Vide a Notice dated 16<sup>th</sup> January, 2019, the court on its own Motion notified the parties that they should attend court on 28<sup>th</sup> February, 2019 to show cause why the suit should not be dismissed for want of prosecution.
8. When the matter came up for notice to show cause why it should not be dismissed for want of prosecution on 28<sup>th</sup> February, 2019, neither the Plaintiff nor its advocate attended court. It is only the Defendants' advocate who attended court and asked the court to dismiss the suit for want of prosecution, which the court obliged.
9. The Plaintiff's Director has deponed that his former advocate did not receive the Notice to show cause why the suit should not be dismissed dated 16<sup>th</sup> January, 2019. However, the advocate to whom the Notice was addressed to has not stated so, either by way of a letter or an Affidavit. Indeed, the Plaintiff's advocate has not denied that the postal address indicated in the Notice to show cause is his, or that he has never received the said Notice in his postal address.
10. The Plaintiff has stated that the issues herein relate to the issues in Machakos ELC. Nos. 162 of 2015 and ELC. No 282 of 2012. This disposition has not been denied by the Defendants. Considering that there are other matters concerning the suit property, I shall allow the Plaintiff's Application so as to enable the court to deal with the issues in dispute in respect to the suit property at once.
11. For those reasons, I allow the Application dated 15<sup>th</sup> July, 2019 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 24<sup>TH</sup> DAY OF APRIL, 2020.**

**O.A. ANGOTE**

**JUDGE**