



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC CASE NO.36 OF 2013

PAUL FRANCIS NJOROGE.....PLAINTIFF

=VERSUS=

ANNAH NDUTA NJOROGE.....1ST DEFENDANT

JOSEPH KINYUA MWANGI.....2ND DEFENDANT

PAUL OCHIENG ODEK.....3RD DEFENDANT

DAVID NGANGA KINYENI.....4TH DEFENDANT

DANIEL WANYOIKE KIGUNI.....5TH DEFENDANT

GICHUHI NJOROGE KAMAU.....6TH DEFENDANT

RULING

This ruling is in respect of an application dated 29th November 2019 by the plaintiff/applicant seeking to set aside the orders dated 28th November 2019 dismissing the application dated 14th November 2019 and setting it down for hearing.

Counsel agreed to canvass the application by way of written submissions which were duly filed. Counsel for the plaintiff/applicant submitted that he did not deliberately fail to attend court so as to forestall or obstruct course of justice. That the plaintiff was present in court but did not hear when the matter was called out.

Counsel further submitted that he arrived in court a few minutes after the matter had been dealt with and dismissed for non-attendance. That the application was filed timeously, that is a day after the dismissal. Mr. Momanyi submitted that there would be no prejudice that the defendants would suffer if the dismissed application is reinstated and heard on merit. Counsel therefore urged the court to allow the application as prayed.

Mr Chepkwony Counsel for the defendant/respondents opposed the application and submitted that the applicant has not tendered any sufficient reason or valid explanation for non-attendance on 28th November 2019.

Counsel submitted that the plaintiff/applicant will not suffer any prejudice if the application is dismissed and the suit was also dismissed for lack of merit. Counsel therefore urged the court to dismiss the application with costs to the defendants.

ANALYSIS AND DETERMINATION

The issues for determination in an application for reinstatement of a dismissed application or suit for non-attendance are as to whether the application was filed without undue delay and whether there was sufficient cause why the applicant did not attend court. It is important to understand what sufficient cause is.

Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances of each case. See the case of Okiya **Omtata Okiiti & another v Okiya Omtata Okiiti & 4 others [2016] eKLR where** the same question was posed and was answered as follows:

"In The Hon. Attorney General vs the Law Society of Kenya & Another, Civil Appeal (Application) No. 133 of 2011 (ur) Musinga, JA saw sufficient cause to be:

“Sufficient cause” or “good cause” in law means:

“.....the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused”. See BLACK’S LAW DICTIONARY, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

From the above and the explanation given by the applicant, the same leaves no doubt in my mind on the explained sequence of events.

I have considered the submissions by both counsel and find that the application was filed without undue delay. I am also satisfied with the explanation for non-attendance as deposed in the supporting affidavit hence I hereby allow the application as prayed and reinstate the Notice of Motion dated 29th November 2019 for hearing on merit. The applicant to fix the application for hearing within 30 days. Costs of this application shall be borne by the applicant.

DATED and DELIVERED at ELDORET this 23RD DAY OF APRIL, 2020

M. A. ODENY

JUDGE