



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 251 OF 2012

**MWAGANDA BOSCO COLUMBA (Suing as the appointed attorney
of RUTH TAUBER).....PLAINTIFF**

VERSUS

MOHAMED GULAMDEFENDANT

RULING

(Application to reinstate a suit that was dismissed for non-attendance/want of prosecution; no record of how the date was taken; probable that plaintiff was not aware of the hearing date; application allowed)

1. The application before me is that dated 5 October 2018 and filed on 12 October 2018. The main prayer in the application is seeking the setting aside of the orders issued on 15 May 2017, which orders dismissed this suit for want of prosecution or non-attendance.
2. The background is that the applicant filed a plaint on 7 November 2012 claiming to be an appointed attorney of one Ruth Tauber. In the plaint, the plaintiff/applicant averred that she (I assume the donor of the power of attorney) is the owner of the Plot No. 312 (Original No. 261/3) MN. She pleaded that she let the premises to one Gabi Engelhart to operate a fish export business. The said Ms. Engelhart is said to have died on 13 August 2012. She had earlier sued Ms. Engelhart for vacant possession of the suit premises before her demise. In this suit, she pleaded that the defendant/respondent is now on the suit land yet she has no contractual relationship with him. In the suit, she asked for vacant possession, damages for trespass and mesne profits. The respondent filed defence where he pleaded that he is the owner of the suit land by virtue of purchase and that the land is now registered in his name and 2 others.
3. On 13 March 2013, the case was mentioned for taking a hearing date and given 5 June 2013 for hearing. On that date, counsel for the plaintiff was in court but he mentioned that he had not served the hearing notice. He also stated that he needs to amend the plaint. The matter was stood over generally.
4. On 30 August 2013, the applicant filed an application to amend the plaint to include three other parties. That application came up for hearing on 23 September 2013 but counsel for the applicant informed court that he had not served and the application was stood over generally. The next time the matter was in court was on 25 March 2015 for the hearing of the same application. Counsel for the respondent pointed out that he was yet to be served with that application and the case was adjourned. The matter then came up on 23 November 2015 when again counsel for the plaintiff stated that he was not aware whether the date was served upon counsel for the defendant. The court directed the case to be mentioned on 15 February 2016 but it appears that it never went to court on that day.
5. Nothing happened until the matter was placed before Yano J, on 15 May 2017 and was dismissed for want of prosecution under Order 17 Rule 2. This application was thereafter filed.
6. In his supporting affidavit, the applicant has averred inter alia that there is no record of how the date of 15 May 2017 was fixed. She has stated that she is willing to prosecute the case.
7. The respondent filed Grounds of Opposition which inter alia state that the application has been made after unreasonable delay and that there is no reasonable explanation why the suit has been dormant since 2016.
8. I have considered the application and the submissions of counsel.
9. I have gone through the record and I have actually not seen any entry on how the date of 15 May 2017 was taken. It is probable therefore that the applicant and her counsel were not aware that the matter would be in court on this day.

10. There has certainly been some indolence on the part of the applicant in prosecuting his case but since it is not clear how the date of 15 May 2017 was taken, and not clear whether the applicant was informed, I have no option but to set aside the order of dismissal and reinstate the suit.

11. This application is therefore allowed but I make no orders as to costs.

12. Orders accordingly.

DATED and delivered this 15th day of APRIL 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA