



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 162 OF 2016**

**GRACE ZAKAYO LINYAMOI.....PLAINTIFF**

**VERSUS**

**WILSON LONAPA.....DEFENDANT**

**RULING**

1. The application dated **20/12/2019** and filed in court on the same date has been brought by the defendant. It seeks an order of review of the court's ruling and order issued on **7/11/2019** dismissing the applicant's application dated **10/9/2019** and that the that application be heard on the merits.
2. The applicant has brought the application under **Section 1A, 1B, 3, 3A, of the Civil Procedure Act, Cap 21 Laws of Kenya Order 45 Rules 1 and 2, Order 51 rule 1 of the Civil Procedure Rules 2010, and Articles 48 159 (2) (d) of the Constitution of Kenya.**
3. The grounds are that this court dismissed the application for want of prosecution, that the advocate misdiarized the ruling date and failed to file submissions, that the default was due to a genuine mistake for which the defendant should not be allowed to suffer. It is also averred that the defendant has already filed an appeal, **Kisumu Civil Appeal No 214 of 2019** which would be defeated unless the prayers herein are granted.
4. The application is supported by the sworn affidavit of Mr. Teti, the applicant's counsel which amplifies the above grounds. He depones that he misdiarized the ruling date for **27<sup>th</sup> November 2019** instead of **7<sup>th</sup> November 2019** and has attached copies of his diary for the relevant dates to prove the same.
5. I have perused the instant application and found no submissions filed with it in support of the application dated **10/9/2019**. The order of this court regarding the application dated **10/9/2019** was that it would be disposed of by way written submissions which the defendant failed to file hence the dismissal.
6. Even if this court were to grant the application dated **20/12/2020**, there are no submissions, even by way of a draft annexed to a supporting affidavit, by which the court would deem itself to have been moved by the applicant. There is also no prayer in the application to have any submissions allowed out of time. Nor is there an express application for reinstatement on its merits.
7. In view of the foregoing I find that the application dated **20/12/2019** has no merit and the same is hereby dismissed with costs to the respondent.

**Dated, signed and delivered at Nairobi via electronic mail on this 29<sup>th</sup> day of May, 2020.**

**MWANGI NJOROGE**

**JUDGE, ELC, KITALE.**