

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 106 OF 2014

DISMAS WAMALWA.....PLAINTIFF

VERSUS

JAMIN MULONGO MANANA.....DEFENDANT

RULING

1. The application dated **23/12/2019** which was filed in court on **23/12/2019** has been brought by the plaintiff seeking the following orders:

a. That the suit herein which was dismissed by failure to comply with directions of the court be and is hereby reinstated.

b. That upon reinstatement the documents filed in court by the plaintiff on 22/8/2018 be deemed as duly filed and served.

c. Costs be in the cause.

2. The applicant has brought the application under **Sections 1A, 1B and 3A and 19 of the Environment and Land Court Act and Article 159 of the Constitution.**

3. The grounds on which the said application is made are that the plaintiff received the court's ruling on **22/8/2018**, outside the compliance period stipulated by the court and could not file the documents ordered by the court on **21/8/2018** as that day was a public holiday. Subsequently he filed an application dated **24/9/2018** which was struck out. He states that he delayed in filing the instant application till he obtained legal advice and that part of the reason for delay was caused by the fact that the applicant suffers a medical disorder that results in memory lapse. These grounds are amplified in the supporting affidavit of the applicant sworn on **23/12/2019**.

4. In response to the application the defendant filed a replying affidavit on **30/1/2020** in which he stated that on **2/2/2017** the court gave the plaintiff a chance to have the suit heard within **60** days; that one year later on **7/2/2018** the suit was dismissed for want of prosecution; that the plaintiff later filed an application to reinstate the suit blaming the failure to prosecute the suit on his advocate and the application was granted on **31/7/2018**; that on that day the court gave the plaintiff **21** days to file and serve his trial bundle failure to which his suit would stand dismissed; that the alleged medical condition and blame upon a court clerk are untruths and that the plaintiff is only being mischievous.

DETERMINATION

5. On **6/2/2020** this court ordered the applicant to file and serve submissions upon the respondent who would respond. By **24/2/2020**, the applicant had not filed submissions. On **24/2/2020** the court ordered that submissions of the application to be filed and served within **2 days** failure to which the application will stand dismissed for want of prosecution. The defendant filed his submissions on **24/2/2020**. The plaintiff filed submissions on **3rd March 2020**. The application herein stands dismissed by virtue of the order of **24/2/2020**. However even if that had not been the case, I have examined the plaintiff's plaint and the defendant's defence in the matter. I find nothing difficult in the securing of documents in support of his case, which are principally the agreements giving the terms and conditions of sale. Among the plaintiff's documents listed in the list filed on **22/8/2018** is an agreement dated **7/3/2014**. It is not included in the bundle filed on that date. It is not explained in the supporting affidavit of the plaintiff. It is a different agreement from the one dated **13/10/2013** whose copy was filed alongside the plaint. In my view, even if the order of **24/2/2020** did not exist, I would have had difficulty with non-inclusion of that agreement dated **7/3/2020** in the supplementary bundle, as it would have meant that the court would have to order service afresh, thereby resulting in more delay in the finalization of the plaintiff's case. The plaintiff was clearly on a venture to waste precious judicial time and delay the hearing of the suit and counterclaim.

6. I hereby declare that the plaintiff's application stands dismissed by virtue of the order issued on **24/2/2020** by reason of failure to file submissions thereon within time as ordered by court and order that the defendant do fix his counterclaim for hearing on its merits.

7. Dated, Signed and Delivered at Nairobi via electronic mail on this 28th day of May, 2020.

MWANGI NJOROGE

JUDGE, ELC KITALE.