



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL APPEAL NO. 13 OF 2014

(Being an appeal arising from Kitale CMCC No. 295 of 2011)

JENNIFER NALIKA HASSAN.....APPELLANT

VERSUS

ADC (OLINGATOGO FARM).....1ST RESPONDENT

GEORGE BARASA.....2ND DEFENDANT

R U L I N G

1. The notice of motion dated 26/4/2017 prays that;

a) This court be pleased to set aside the orders made on 20/3/2017 dismissing suit for want of prosecution and that the same be reinstated for hearing on merit.

2. The affidavit of A.A. Andambi sworn on the even date in support of the said application blames the loss of the file at the registry for failure to prosecute the appeal. He has attached correspondences to the registry dated 2/3/2015 and 8/3/2016 to that effect.

3. Mr Kiarie Advocate for the Respondent vide his replying affidavit dated 29/5/2017 has attached two replies from the court to the applicants counsel showing that the file was available and that the same was not misplaced.

4. Having read the application herein, this is a case of pure indolence on the part of the applicant. There is no reason why he failed to check the court registry so as to ascertain that the file was available.

5. I would have dismissed the application as requested by the Respondents. The respondent should however not take much credit as the dismissal of the matter was done by this court suo moto. If indeed it desired to have the same dismissed it ought to have filed an application to that effect.

6. So as not to drive the applicant from the judgment sit I shall allow the application and order that the appeal be and is hereby processed within the next 30 days from the date herein.

7. The Respondent shall have the cost of this application.

Delivered, signed and dated at Kitale this 17th July 2018.

H.K. CHEMITEI

JUDGE

17/7/18

In the presence of:

Mfutu for the Respondent

No appearance for the Applicant

Kirong – Court Assistant

Ruling delivered in open court.