



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 164 OF 2013

SOPHIE FEIS LWANGU.....PLAINTIFF

VERSUS

JOHN NJENGA.....1ST DEFENDANT

JULIUS OMWENGA2ND DEFENDANT

JAMES MUDACHI.....3RD DEFENDANT

WAWERU NYAGA.....4TH DEFENDANT

ELIUD JOMO.....5TH DEFENDANT

PRATAS KAMRET.....6TH DEFENDANT

RULING

1. By an order dated **28/2/2018**, this suit was dismissed with costs to the defendants for want of prosecution. On **21/3/2019** the plaintiff filed an application seeking orders to reinstate the plaintiff's suit and set aside the bill of costs taxed on **13/9/2018**. The application came up before court on **25/4/2019** when the parties were ordered to file their respective written submissions.
2. The application was brought pursuant to **Order 51 Rule 1, 3 and 4 of the Civil Procedure Rules 2010, Section 3A Civil Procedure Act**.
3. The grounds on which the said application is made are that the plaintiff's erstwhile advocate ceased to act for the plaintiff without the knowledge of the plaintiff and the plaintiff only realised this after the disposal of the suit for want of prosecution; that the plaintiff has now appointed a new firm of advocates to handle the matter and they are willing and able to prosecute the suit, and that it is in the interest of justice that the suit be tried on merit. The plaintiff avers that unless the suit is reinstated she will suffer considerable harm as her land will be lost to the defendants
4. The application is supported an affidavit of the plaintiff dated **6/3/2019** which amplifies the grounds set out above.
5. The defendants filed a replying affidavit sworn by John Njenga on **25/4/2019** swearing on behalf of other defendants he stated that the suit was filed in **May, 2014**; that an interim injunction was issued but even after the orders lapsed, the application and the suit have never been prosecuted; that on the day when the suit was dismissed neither the plaintiff nor her advocate were in court; that the plaintiff's erstwhile advocate Ms. David Ingosi & Company were served with notice of dismissal; that upon service of a notice to show cause the plaintiff and her advocate did not attend court and that the delay in bringing the application for reinstatement is unexplained and inordinate.
6. The respondents filed their written submissions on **11/6/2019**. I have examined the entire court record and found no submissions filed on behalf of the plaintiff.
7. There being no other manner of disposal ordered in respect of the instant application except written submissions, and the applicant having failed to file those submissions I find that she has failed to prosecute her application and I hereby dismiss it with costs for want of prosecution.

Dated, signed and delivered at Nairobi via Teleconference on this 14th day of May, 2020.

MWANGI NJOROGE

JUDGE, ELC, KITALE.

Ruling read in the presence of:

Hon Mercyline Lubia, DR.

N/A for the applicant.

N/A for the respondent.

MWANGI NJOROGE

JUDGE, ELC, KITALE.

14/5/2020.