



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 218 OF 2012

CONSOLIDATED WITH ELC NO. 539 OF 2009

PETER C. GATOTO KARANJA.....1ST PLAINTIFF

JAMES WANYOIKE GATOTO.....2ND PLAINTIFF

VERSUS

STEPHEN KARANJA GATOTO.....1ST DEFENDANT

GODFREY NJOROGI WANYOIKE.....2ND DEFENDANT

RULING

1. This is the notice of motion dated 10th June 2019 brought under order 12 rule 7 of the Civil Procedure Rules.

2. It seeks orders:-

1. That the orders of 20th May 2019 be set aside and the plaintiff's suit be reinstated for hearing.

2. That costs of this application be provided for.

3. The grounds are on the face of the application and are:-

(a) That the non attendance in court was due to unavoidable circumstances.

(b) That the plaintiff is keen on prosecuting his claim and will be seriously prejudiced if the counterclaim is decided against him.

4. The application is supported by the affidavit of James Wanyoike Gatoto, one of the plaintiff's herein sworn on the 10th June 2019.

5. The application is opposed. There is a replying affidavit sworn by Stephen Karanja Gatoto, the 1st defendant herein sworn on the 29th July 2019.

6. The application was canvassed by oral submissions.

7. I have considered the notice of motion on the affidavit in support, the replying affidavit and the oral submissions of counsel. The issue for determination is whether this application is merited.

8. I note that, James Wayoike Gatoto, the 2nd plaintiff is elderly. It has been stated that on 20TH May 2019 he was indisposed. A letter dated 6th June 2019 from a clinical officer at Ngewa Health Center states that the 2nd plaintiff sought treatment at the facility on 16th May 2019. That he was advised to be on bed rest for five days from 17th May 2019 to 21st May 2019. He was asked to go back for review on 22nd May 2015. I am satisfied that the 2nd plaintiff was indisposed on 20th May 2019 when the suit was dismissed.

9. I am also satisfied that there are justifiable reasons to warrant reinstating of the plaintiff's suit. The plaintiffs deserve an opportunity to ventilate their claim I therefore grant the orders namely; that the orders of 20th May 2019 are hereby set aside and the plaintiff's suit is reinstated. The plaintiffs shall bear costs of this application.

10. It is so ordered.

Dated, signed and delivered in Nairobi on this 18th day of June 2020.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Njoroge for Mutiso for the plaintiffs

No appearance for the defendants

Kajuju – Court Assistant.