

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND COURT

ELC. CASE NO. 265 OF 2001

MUTETE OLE KISHAU.....1ST PLAINTIFF

SIMON SAITOTI LEKOORA.....2ND PLAINTIFF

MINTENGAAYU OLE SOPIA.....3RD PLAINTIFF

(SUING ON BEHALF OF THEMSELVES AND ON BEHALF OF
AS REPRESENTATIVES FOR

THE BENEFIT OF 205 MEMBERS OF NAMONCHA MAASAI
COMMUNITY WHOSE NAMES

ARE SET OUT IN THE SCHEDULE IS ATTACHED TO THIS SUIT)

VERSUS

KIAMBU NYAKINYUA FARMERS COMPANY LTD.....DEFENDANTS

RULING

Coming up before me for determination is the Notice of Motion dated 16th July 2015 in which the Plaintiffs/Applicants seek for orders that the dismissal order of this court dated 14th July 2015 be set aside, that The suit herein be reinstated and admitted to hearing and that the costs of this Application be in the cause.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of Gideon Solonka Kilakoi, sworn on 16th July 2015 in which he averred that he is an Advocate of the High Court of Kenya having the conduct of this matter on behalf of the Plaintiffs/Applicants. He averred further that on 16th June 2015, he was served with a notice under **Order 17 Rule 2(1) & (4) of the Civil Procedure Rules, 2010** dated 26th May 2015 which was a Notice to Show Cause which was scheduled for hearing on 15th July 2015. He averred further that in response to the said Notice to Show Cause, he filed the Plaintiffs' Affidavit sworn by Mutete Ole Kishau, the 1st Applicant herein on 13th July 2015 and filed in court on the same day. He further averred that on 15th July 2015, the Plaintiffs and his Associate Advocate Nancy Khafafa attended court but found that the same was not listed in the days cause list. He further averred that upon his said Associate Advocate making inquiries at the Registry, she was informed that the suit was dismissed on 14th July 2015 before Lady Justice Gitumbi. He further averred that he was utterly shocked that a matter whose date was clearly indicated as 15th July 2015 was surreptitiously listed for hearing on 14th July 2015 without anyone being given any notification whatsoever. He further averred that the issuance of a Notice to Show Cause herein was suspect and premature in the first place since the suit was lastly before Justice Mutungi on 18th March 2015. He further added that the provisions of Order 17 Rule 2 of the Civil Procedure Rules, 2010 can only be invoked in a suit in which no application has been made or step taken by either party for one (1) year which is not the case in the instant

suit. He further averred that the dismissal of the suit was a mistake apparent on the face of the record and urged the court to reinstate the same and permit the case to be heard on merit.

The Application is not contested.

I have perused the court record and do confirm that this matter came before me on 26th May 2015 when none of the parties were present in court. I directed that a Notice to Show Cause why the suit should not be dismissed for want of prosecution be issued and served upon the parties for a hearing on 14th July 2015. I confirm that the Notice to Show Cause was issued and served upon counsels for the parties, including upon Solonka & Co. Advocates on behalf of the Plaintiffs/Applicants. However, I have noted that the date for the hearing of the Notice to Show Cause that was served was 15th July 2015 instead of 14th July 2015 as I had indicated. Understandably, when the Notice to Show Cause came up for hearing on 14th July 2015, none of the parties were present in court and I proceeded to dismiss the suit for want of prosecution. Clearly, there was a mistake in dating the Notice to Show Cause and I concede that this was a mistake on our part.

In the circumstances, I accept the explanation given by the Plaintiffs as to their failure to attend court on 14th July 2015 and do hereby allow this Application.

DELIVERED AND DATED AT NAIROBI THIS 11TH DAY OF MARCH 2016.

MARY M. GITUMBI

JUDGE