



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**ENVIRONMENT & LAND COURT**  
**CIVIL CASE NO.200 OF 2012**

**SUSAN MWIHAKI NJOROGE.....PLAINTIFF**

**VERSUS**

**MARTHA WANJIKU NYUTU**

**KAMAU MATEGA**

**PATRICK NYUTU MWANGI**

**ANN MARGARET WAMBUI NDUATI.....DEFENDANTS**

**R U L I N G**

The application before court is dated 16/6/2014 wherein the applicant seeks orders that the order made on 10/6/2014 dismissing the suit for want of prosecution be vacated and the suit be reinstated for hearing on merit. The application is grounded on the fact that this matter was slated for hearing on 10/6/2014. On the scheduled day, the plaintiff was indisposed and was being treated at Murang'a District Hospital suffering from hypertension. She instructed her advocate to apply for adjournment which application was refused. The applicant believes that this being a land matter, it should not be dismissed as the application for adjournment was not frivolous and/or vexatious. That the plaintiff could not have managed to attend court on that day and as a sign of good will she sent her advocate to apply for adjournment on her behalf. She prays that the suit should be reinstated for hearing on merits since the application has been brought expeditiously and without inordinate delay.

The application is supported by the affidavit of Susan Mwihaki Njoroge who depones that when the matter was scheduled for hearing, she was at Murang'a District Hospital indisposed suffering from hypertension and could not have attended court.

The respondent opposed the application and filed a replying affidavit whose gist was that this suit was clearly filed to perpetuate mischief and should not be allowed to stand. That to the best of his knowledge all M.O.H cards do have outpatient numbers and receipts for payments thereof which are ominously missing in the cards presents. Its become the norm for the plaintiff to claim illness whenever the case comes up for hearing. He stated that counsel for the plaintiff had indicated that the client was not present in court as she was incoherent and needed substitution. That prior to this suit, there was civil case No.95 of 2010 involving the same parties where the plaintiff can properly ventilate her grievances.

When the matter came for submission, Mr. Njoroge entirely relied on the supporting affidavit. Mr. Karweru for respondent relied on the replying affidavit and added that the medical report is not authentic as it did not have an outpatient department number and that there were no receipts.

Having read the application, supporting affidavit and replying affidavit, and listened to the submissions of counsel, I'm convinced that the General Outpatient Card issued to Susan Mwihaki by Murang'a District Hospital is genuine as the same is endorsed with the hospital rubber stamp and the respondent has availed no tangible evidence to the contrary. The card is on the letterhead of the hospital and bears serial number

324914. Mr. Karweru should have confirmed with the hospital before opposing the application.

This court is inclined to exercise its discretion by setting aside the order made on 10/6/2014 dismissing the suit for want of prosecution. The suit is hereby reinstated for hearing on merit. Costs in the cause.

*Dated, signed and delivered at Nyeri this 10th day of October, 2014.*

**A. OMBWAYO**

**JUDGE**