



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 24 OF 2004(O.S)**

**JOHN MUTISYA MUTHIANI.....PLAINTIFF/APPLICANT**

**VERSUS**

**DAVID KASAMU MULANDI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**JEREMIAH NGUNZI KISAU.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. In the Amended Notice of Motion dated 20<sup>th</sup> March, 2019, the Plaintiff has sought for the following reliefs:

- a. That this Honourable Court do review and set aside the court orders made on 28<sup>th</sup> September, 2018 dismissing the Plaintiff's suit and all other consequential orders.*
- b. That the Honourable Court be pleased to reinstate the Plaintiff's suit.*
- c. That the Honourable Court do allow the Plaintiff/Applicant prosecute his case which was dismissed.*
- d. That the costs of this Application be provided for.*

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that this suit was dismissed on 28<sup>th</sup> September, 2018; that on 28<sup>th</sup> September, 2017, his advocate had written a letter to the Deputy Registrar of this court to transfer this matter to Makueni Law Courts where the suit land is situated and that this matter was transferred to Makueni via a letter dated 4<sup>th</sup> December, 2017.

3. The Plaintiff deponed that his then advocate believed that the file had been forwarded to Makueni Law Courts since the same could not be traced at the court registry and that his then advocate was never served with the Notice to show cause why the suit should not be dismissed for want of prosecution.

4. The Plaintiff lastly deponed that the subject suit properties are located in Makueni County and that this court did not have jurisdiction to dismiss the claim. The Application was not opposed.

5. The record shows that this suit came up for directions on 28<sup>th</sup> October, 2016. On that day, the court issued directions as follows:

*“The matter to proceed by way of viva voce evidence. Parties to file and exchange witness statements and documents within 45 days and fix the matter for hearing in the registry.”*

6. There is no indication that the matter was ever fixed for hearing as directed by the court on 28<sup>th</sup> October, 2016. It is because of the inactivity on the part of the Plaintiff that by way of a Notice to show cause why the matter should not be dismissed for want of prosecution dated 5<sup>th</sup> September, 2018, the matter was fixed for the dismissal of the suit on 28<sup>th</sup> September, 2018.

7. The copy of the Notice to show cause why the suit should not be dismissed shows that the Plaintiff's then advocate, MS. Osoro Omwoyo & Co. Advocate was served with the Notice through his postal address.

8. The Plaintiff's previous advocate has not sworn an Affidavit to dispute the postal address captured in the Notice to show cause. Indeed,

the said Advocate has not deponed that he never received the said Notice to show cause why the suit should not be dismissed.

9. Although the Plaintiff has deponed that this suit was transferred to Makueni Law Courts, the letter dated 4<sup>th</sup> December, 2017 shows that the matter was only moved to Makueni Environment and Land Court for the purpose of hearing a Certificate of Urgency because the Presiding Judge was away on a Service Week. The file must have been returned back to the Environment and Land Court Machakos immediately after the Certificate of Urgency was dispensed with by the Judge sitting in Makueni.

10. There is therefore no evidence on record to show that this file was transferred to the Environment and Land Court, Makueni as stated by the Plaintiff. Indeed, having not formally transferred the suit to the Environment and Land Court, Makueni, this court had the requisite jurisdiction to deal with the suit, notwithstanding the fact that the suit property is situated in Makueni.

11. Indeed, Section 4(3) of the Environment and Land Court Act grants this court jurisdiction to deal with disputes relating to land and the environment throughout Kenya. Therefore, notwithstanding the fact that the suit property is situated in Makueni, this court has jurisdiction to deal with the matter, the same having been filed in the Environment and Land Court, Machakos.

12. In any event, the Plaintiff has not informed the court why he never took any step to prosecute the suit between 28<sup>th</sup> October, 2016, when the court gave directions for the hearing of the suit and 28<sup>th</sup> September, 2018, when the matter came up for the dismissal of the suit for want of prosecution.

13. Considering that Order 17 Rule 2(1) of the Civil Procedure Rules allows the court to dismiss a suit in which no application has been made or step taken by either party for one (1) year, and in the absence of an explanation from the Plaintiff why he never took a step to prosecute the suit for more than one (1) year, I find the Application dated 20<sup>th</sup> March, 2019 to be unmeritorious.

14. The Application dated 20<sup>th</sup> March, 2019 is therefore dismissed with no order as to costs. For avoidance of doubt, the suit stands dismissed as ordered by the court on 28<sup>th</sup> September, 2018.

**DATED, SIGNED AND DELIVERED IN MACHAKOS THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2020.**

**O. A. ANGOTE**

**JUDGE**