



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 28 OF 2011

PAUL WANJALA MAKOKHA.....PLAINTIFF

VERSUS

TITO KHAKINA.....1ST DEFENDANT

ALBERT MUKANDA.....2ND DEFENDANT

R U L I N G

1. The application dated **18/10/2018** and filed in court on **19/10/2018** has been brought by the plaintiff. It seeks an order that the orders made on 4/10/2017 dismissing the plaintiff's suit and all other consequential orders be set aside and that the plaintiff's suit be reinstated. The application is not opposed.

2. The application is supported by the sworn affidavit of the plaintiff dated 18th October 2018.

3. The grounds upon which the application is made are contained in that affidavit and at the foot of the application. In brief they are that the failure to prosecute the matter was not deliberate; that the plaintiff's erstwhile advocate's health and also the plaintiff's health deteriorated; that due to his arthritic condition the plaintiff could not get in touch with his advocate; that he only came to learn in **2017** that his advocate had passed on in **2015**; that it has taken him time to trace the former employees of his former advocate's firm; that the court file could not be traced with ease as it had been taken to the archives section; that he was not personally served with the notice to show cause and that he should not be made to suffer for the mistakes of counsel on the record. He maintains that he has an arguable case.

4. I have examined the unopposed application and found that there is merit in what the plaintiff states and for that reason I grant the application as prayed. This suit shall however be given a priority hearing date immediately after this ruling is delivered.

Dated, signed and delivered at Kitale on this 31st day of January, 2019.

MWANGI NJOROGE

JUDGE

31/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga for the plaintiff

N/A for the defendants

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

31/01/2019