

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NANYUKI
ELC CASE NO. 42 OF 2021

**SAMSON MUTHAMI NDUNG’U (Suing as an
Administrator of the Estate of the Late BENSON
NDUG’U THEURI Alias NDUNG’U THEURI MWEMA)**

.....PLAINTIFF

VERSUS

STEPHEN KIMANI MWANIKI & 55

**OTHERS.....DEFEND
ANTS**

RULING

1. This suit was dismissed for want of prosecution on 29.7.2024. The plaintiff filed the application dated 13.2.2025 for reinstatement of the suit but the said application was dismissed for want of prosecution on 4.3.2025. The plaintiff filed another application dated 7.3.2025 for the reinstatement of the application dated 13.2.2025 and the suit of which, in a ruling delivered on

14.5.2025, the court reinstated the earlier application of 13.2.2025 and not the suit.

2. Thus the ruling herein relates to the application dated 13.2.2025. The plaintiff avers that no Notice to show cause as to why the suit should not be dismissed was served upon his advocate. He avers that he has a good and arguable case. In the supporting affidavit sworn by his advocate. It is argued that at the end of January 2025, the advocate instructed his clerk to check the position of this matter, that is when he found that a notice to show cause had been issued and the matter was dismissed on 29.7.2024. He avers that he was not served with the notice to show cause.

3. No response was filed in respect of the application of 13.2.2025. Nevertheless, this court has a duty to consider the merits of the said application, See **Tullow Oil PLC & 3 others v PS Ministry of Energy & 15 others [2020] eKLR.**

4. The records indicate that the plaintiff did little or nothing to prosecute the suit after his application to amend the

plaint was allowed on 3.5.2021. For instance, after the orders of 3.5.2021, the plaintiff appeared in court almost a year later on 9.3.2022, then on 7.11.2022, while in year 2023, the only appearances were on 20.2.2023, 5.10.2023 and 25.10.2023. On 19.2.2024, the application by counsel for 34th and 35th defendants to cease actin g was allowed in the presence of counsel for the plaintiff. However, thereafter, the plaintiffs took no steps to prosecute the suit.

5. In the case of **Fran Investments Limited v G4S Security Services Limited [2015] eKLR**, the court stated that;

“Order 17 Rule 2 (1) of the Civil Procedure Rules does not require service of notice; it uses the word “give notice”. The court may give notice of dismissal through its official website or through the cause-list. And those mediums will constitute sufficient notice for purposes of Order 17 Rule 2 (1) of the Civil Procedure Rules”.

6. In the case at hand, the Notice to Show Cause was duly given by the court. However, I note that within the period of one year leading to the date of 29.7.2024, the prosecution of the application for Mr. Bwononga (for the 34th and 35th defendants) to cease acting was underway. In that regard, I am inclined allow the reinstatement of the suit but on condition that the suit once listed for hearing shall not be adjourned at the instance of the plaintiff, and that the plaintiff must comply with any directions given by the court regarding the prosecution of this matter. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 15TH DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS.

**LUCY N. MBUGUA
JUDGE**

In the presence of:

Warutere for plaintiff

Nancy Mwangi – Court Assistant

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