



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 160 OF 2015

PETER ELIMA NYUKURI.....1ST PLAINTIFF

DAVID NYONGESA WAMALWA.....2ND PLAINTIFF

VERSUS

LEONARD K. WAMOCHO.....1ST DEFENDANT

KENNEDY W SITOKO.....2ND DEFENDANT

PROTUS S MUNIALO.....3RD DEFENDANT

ANDREW BOAZ JUMA.....4TH DEFENDANT

MOURICE TABALIA.....5TH DEFENDANT

PATRCK JOKINDA.....6TH DEFENDANT

RULING

1. The application dated **21/11/2018** and filed in court on the same has been brought by the plaintiffs. It seeks an order that the honourable court be pleased to restate the applicant's case and upon reinstatement of the case the same be allowed as prayed. They also prayed for costs be granted to the plaintiffs. The application is not opposed.

2. The application is supported by the sworn affidavit of the 1st plaintiff dated **21st November, 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 case was dismissed for non-attendance by failure to attend court by the applicants case resulted from misinformation to the effect that trial; that the omission was inadvertent and that the applicant has good cause and that it is the interest of justice that the application is allowed.

4. There is no evidence on the file record that the hearing notice for the hearing scheduled for **30/10/2018** was ever served upon the plaintiff or the defendant. None of the parties were in court on the hearing date.

5. In view of the above situation I am satisfied that substantive justice would be done in this case if the dismissal order was set aside and the case ordered heard on its merits.

6. I therefore grant the application date **21/11/2018** in terms of **prayer (a)** alone. There shall be no orders as to costs. The suit shall be expeditiously fixed for hearing.

Dated, signed and delivered at Kitale on this 28th day of February, 2019.

MWANGI NJOROGE

JUDGE

28/2/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Elias

Applicant in person present

N/A for defendants

(Defendants absent)

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/2/2019