



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 354 OF 2017

JOSPHINE NDUTA MWANGI.....APPLICANT

VS

E. MUNGAI UNO.....RESPONDENT

RULING

1. The Applicant filed the Notice of Motion dated 17/12/18 under Order 12 rule 1 and 7, Order 51 rule 1 of the Civil Procedure Rules, seeking the following orders;

a. That the Court be pleased to set aside its orders of the 9/4/18 which dismissed this case for non-attendance and the Plaintiff /Applicant herein be allowed to proceed with her case until the same is heard and finalized.

2. The application is based on the grounds on the face of it and on the supporting affidavit of Paul K Kamata sworn on the 14/12/18. He stated *inter alia* that he travelled to Court by public means (say Matatu) which developed mechanical problems enroute to Muranga at Makuyu area and arrived at the Court passed 9.30am when this matter had been called out and the parties being absent, the Court dismissed it for non-attendance.

3. That his non-attendance to Court on the material date was inadvertent and urged the Court to reinstate the matter so that it may be heard on its merits.

4. I have perused the Court record and note that this matter was duly dismissed for nonattendance on the 9/4/18. The instant application was filed on the 17/12/18, some 8 months down the road. The Applicants Counsel Mr Kamata explained this delay in his oral submissions when he argued the application on the 29/1/19 that the Plaintiff is an old lady and it took long for her to visit his chambers for purposes of giving him further instructions.

5. The application has not been opposed by the Respondents and the Court is satisfied that no prejudice will be visited on them if the matter is heard on its merits.

6. Is the application for setting aside the orders of the 9/4/18 merited? The Applicant has given the reasons as to why the delay in bring this application and setting down this matter for hearing and has appealed to the Court to set aside the said dismissal orders so that the matter may be set down for hearing. In exercise of its powers under Order 12 rule 7, this Court exercises discretion and reinstates the suit for hearing under the conditions set out in the next paragraph.

7. The application is allowed subject to Applicant fixing the matter for hearing within the next 30 days failure to which this matter shall stand dismissed thereafter without any further orders of this Court.

8. The Applicant shall meet the costs of the application.

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF FEBRUARY 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of;

Kamata for the Plaintiff/Applicant

Defendant/Respondent – Absent

Irene and Njeri, Court Assistants