



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 72 OF 2003

UTANU NA ULUNGALU YATTA TRADING

INDUSTRY CO. LTD.....PLAINTIFF/APPLICANT

VERSUS

FRANCIS MUTUA MBOYA.....DEFENDANT/RESPONDENT

MUTUA MBOYA & NZISSI ADVOCATES]

NGANGA NGIGI P/A

NGANGANGIGI & CO. ADVOCATES]

PAUL NDIKU MUNYWOKI]....PROPOSED DEFENDANTS

/ RESPONDENTS

BEATRICE WAKHUNGU]

JANET NYAGA]

GRACE NDUNDA]

RULING

1. The Notice of Motion dated 16th March, 2018 and filed by Plaintiff is seeking for the following orders:

a. That this Honourable Court do set aside and/or vary the orders of 20th November, 2017.

b. That the Application dated 27th July, 2015 herein be reinstated and determined on its merit.

c. That costs of this Application be in the cause.

2. The Application is premised on the following grounds: that the Application dated 27th July, 2015 came up for hearing on 20th November, 2017; that due to the non-service of the Application on the Respondent, the same was dismissed by the court and that the non-service of the Application dated 27th July, 2015 on the Respondent was an inadvertent mistake that should not be visited on an innocent litigant.

3. It was the deposition of the Plaintiff that the High Court which was in conduct of this matter was divested of jurisdiction to hear land matters; that this matter was transferred to the Environment and Land Court in Nairobi and that they were unable to trace the file.

4. It is the Applicant's deposition that the Application dated 27th July, 2015 seeks to enjoin the proposed Defendants who bought the suit properties and that the Plaintiff will be prejudiced if the said Application is not heard on merit. The Defendants herein did not file any response to the said Application.

5. The Plaintiff's Application dated 27th July, 2015 seeking the joinder of Paul Ndiuku Munywoki, Beatrice Wakhungu, Janet Nyaga and

Grace Ndunda as Defendants came up for hearing on 20th November, 2017. On the said date, the Applicant's advocate informed the court that he had not served the 3rd-6th Defendants with the Application and requested for another date.

6. The oral Application by the Plaintiff's advocate to adjourn the matter to enable him serve the Application was declined by the court, and the Application dated 27th July, 2015 was dismissed.

7. The Plaintiff now claims that the failure to serve the said Application was caused by the transfer of the file from Machakos to Nairobi and then back to Machakos and that the failure was also due to an inadvertent mistake of the Plaintiff's advocate.

8. The Application that the Plaintiff is seeking reinstated was filed in the year 2015. It cannot be said that the same could not be served on the Defendants because of the movement of the court file from Machakos to Nairobi and then back to Nairobi because the Plaintiff's advocate had the copies of the Application. Considering that it took more than two (2) years for the Plaintiff's advocate to realize that he had not served the same on the Defendants, I find that the reasons given for failure to serve the Application are not plausible and are inexcusable.

9. Indeed, this matter having been filed in the year 2003, the continuous filing of Applications by the Plaintiff is delaying the hearing of the matter which is unacceptable. Consequently, I dismiss the Application dated 16th March, 2018 with no order as to costs. The Plaintiff should move with haste to fix this old matter for hearing

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE