



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT MERU

ELC JR CASE NO. 21 OF 2013

HUSSEIN ABDALLA HILLE.....1ST APPLICANT

AHMED ALI HILLE.....2ND APPLICANT

VERSUS

THE GOVERNOR COUNTY OF MARSABIT.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF MARSABIT....2ND RESPONDENT

AL-UL SUNA MOSQUE & MADRASSA.....INTERESTED PARTY

RULING

1. By a Notice of Motion dated 5th December 2018, brought under **Order 10 Rule 11, Order 51 Rule 1 of the Civil Procedure Rules, Section 63 (e) and 3 (a) of the Civil Procedure Act, Articles 48, 159 (2) (d) and 165 (5) (b) of the constitution of Kenya**, the Applicants who are the plaintiffs herein have sought for the following orders :

- a) Spent
- b) That leave be granted to the firm of M/S Guantai & Associates to come on record in this matter in place of the firm of M/S Charles Kariuki & Kiome Associates for the Applicants.
- c) That the dismissal order dated 19th February 2018 be set aside and the suit herein be reinstated.
- d) That this court do make any other or such further orders as it may deem fit, just and expedient to make.
- e) That the costs of this application be in cause.

2. The application is based on the following grounds;

- a) That this matter was fixed for Notice to show cause on 19th February 2018 for the Applicants to show cause why the suit herein should not be dismissed for want of prosecution
- b) That on the same day, with no appearance being made for the applicants the suit was dismissed for want of prosecution.
- c) That despite having counsel on record, the applicants were never informed of the dismissal notices, and none were served upon the applicants.
- d) That it is only after enquiries as to why the matter had dragged on in the court for so long, were the applicants informed that the suit had been dismissed for want of prosecution.
- e) That immediately upon hearing of the dismissal orders, the applicant sought out another advocate to take up this matter on their behalf.
- f) That the applicants swiftly instructed the said firm of advocates to take up the matter and file the present application.

g) That the applicants believe that they have a good cause with high chance of success and they ask this court to set aside the dismissal orders.

h) That the applicants herein are likely to suffer irreparable harm should the orders sought herein not be granted.

i) That the applicants shall abide by any timelines set by this court to have this matter heard and determined should it grant the orders sought.

3. Further the application is supported by the affidavit of Hussein Abdalla Hile, where he has reiterated the grounds in support of the application.

4. The application was unopposed even after the respondents were served.

5. The issue for determination in the present application is **whether this suit should be reinstated.**

6. Section 3A of the Civil Procedure Act gives this court inherent power to make such orders as may be necessary for the ends of justice to be met. The court's discretionary power should, however, be exercised judiciously, with the overriding objective of ensuring that justice is done to all the parties.

7. A party seeking to have the suit reinstated must demonstrate good faith and bring the application for reinstatement without unreasonable delay. In **Simion Waitim Kimani & Three others vs Equity Building Society (2010) eKLR** it was stated thus;

“The courts have discretion generally to reinstate a suit which is dismissed for non-attendance but in all matters involving the exercise of the courts discretion, it must be exercised judiciously based on facts and law. The party seeking to reinstate the suit must also demonstrate good faith and the application should be brought to court without unreasonable delay....”.

8. In the case of **Belinda Murai & Others Vs Amoi Wainaina (1978) KLR 2782**, Madan J set out the following approach to be adopted when dealing with the question as to whether or not a party should be completely locked out of the seat of justice on account of a mistake;

“The door of justice is not closed because a mistake has been made by a lawyer of experience who ought to know better. The court may not condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistake which is politely referred to as erring in their interpretation of laws...”.

9. In **Alice Mumbi Nganga vs Danson Chege Nganga & Another (2006) eKLR**. Kimaru J stated that ;

“It behoves the litigant to always follow up his case and check its progress. He cannot come to court and say that he was let down by his advocate....”

10. In the present case the matter lay in limbo from 4.12.2014, until 24.1.2018, when the court took the initiative of clearing the back log of old cases. The then advocate for the applicant was duly served with the notice to show cause as to why the matter should not be dismissed.

11. That notwithstanding, I will exercise judicial discretion in favour of the applicant with a rider that the suit once set down for hearing shall not be adjourned at the instance of the Applicant/Plaintiff, and the hearing date must be taken within 4 months from the date of delivery of this ruling. The application is hence allowed and applicant to pay costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 27TH MARCH, 2019

IN THE PRESENCE OF:-

C/A: Kananu

Ojiambo holding brief for Guantai for applicant

Abdi Abubakar as the Interested Party

1st applicant

HON. LUCY. N. MBUGUA

ELC JUDGE