



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 196 OF 2017

JOEL GITAU MACHARIA.....1ST PLAINTIFF/APPLICANT

PETER MUREU.....2ND PLAINTIFF/APPLICANT

ROSE NYAMBURA.....3RD PLAINTIFF/APPLICANT

JACINTA WANGARI.....4TH PLAINTIFF/APPLICANT

BENSON MAINA.....5TH PLAINTIFF/APPLICANT

DANIEL CHEGE.....6TH PLAINTIFF/APPLICANT

JACOB G. RUGANO.....7TH PLAINTIFF/APPLICANT

KAMITA NJOROGE.....8TH PLAINTIFF/APPLICANT

HESTON NGURA.....9TH PLAINTIFF/APPLICANT

VS

MARY MWAGO NJUGUNA.....DEFENDANT/RESPONDENT

BENSON IRUNGU GICHARU.....DEFENDANT/RESPONDENT

RULING

1. The application before me is dated the 14/11/2018. It is brought under Order 12 rule 1 and 7, Order 51 rule 1 of the Civil Procedure Rules, seeking the following orders;

- a. Spent.
- b. That the orders for the dismissal of the Plaintiff's suit for non-attendance/ want of prosecution be set aside *ex debito justiae*.
- c. That the Plaintiff's suit be and is hereby reinstated.
- d. That the honourable Court be pleased to set aside/review the orders made on the 14/11/18 dismissing the suit for non attendance and want of prosecution.
- e. Costs of the suit.

2. The application is based on the grounds on the face of it and on the supporting affidavit of Ruth Maina Advocate sworn on the 14/11/18. She stated *inter alia* that she appeared before the Court on the 14/11/18. Interestingly, she avers that she consulted the Court clerk and after presenting her predicament on why she was late she was informed that she would not be heard by the honourable Judge and that she should file another application. Thereafter she served an invitation to fix a hearing date upon the Defendants. That it is then she discovered that the case had been dismissed.

3. The application is opposed by the 1st Respondent while the 2nd Respondent did not file any response to the application. The 1st

Respondent termed the application an abuse of the process of the Court and at best should be dismissed. The Learned Counsel for the 1st Defendant pointed out the mix up of the applications by the Plaintiff and that there is no plausible reason why the Counsel for the Plaintiff was late in coming to Court and secondly why the suit and application should be reinstated.

4. The background of this case is that the matter was fixed for hearing several times but it collapsed for reasons attributed to both parties at different times. On the 12/7/18 the parties fixed the hearing date for the 26/9/18 but on the material date the parties and their Counsel were absent in Court. The Court proceeded to dismiss the suit in accordance with Order 12 rule 1. On the 1/11/18 the Applicant filed a Notice of motion dated the 31/10/18 seeking the setting aside of the dismissal orders issued on the 26/9/18. The Court directed the Applicant to serve the application on the Defendants for interpartes hearing at a date to be fixed at the registry. The Applicant proceeded to fix the Notice of Motion for hearing on the 14/11/18, however none of the parties were present and the Court dismissed the application for non-attendance/want of prosecution.

5. What followed next is that the Applicant swiftly filed another application dated 14/11/18, the current application. I have perused the record for the 14/11/18 and there is no record that the said Counsel Ms Ruth Maina attended the Court on the material date. Strangely she deponed in her affidavit that she attended Court and consulted a clerk (she did not disclose the name of the clerk) about her predicament of being late. It is trite that Advocates are officers of the Court. They owe a duty to their clients as well as the Court to assist and facilitate the achievement of the overriding objectives of the Court in order to promote the smooth administration of justice. Why would an Advocate consult a clerk instead of addressing the Court on matters before the Court? The Court can only reckon that the Counsel is misleading the Court.

6. The Court is not inclined to exercise its discretion in favour of the Applicant because no reason has been given as to why firstly the Counsel failed to attend Court on the 14/11/18, secondly as to why the Plaintiffs did not attend Court on the material day. I note that the Plaintiffs have not sworn any affidavit to explain their non attendance.

7. For purposes of clarity the dismissal orders of the 14/11/18 were in respect to the dismissal of the application dated the 31/10/18 which sought to set aside dismissal orders of the suit dated the 26/9/18.

8. The upshot is the application dated the 14/11/18 is not merited. It is dismissed with orders to the Respondents.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 21ST DAY OF MARCH 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Kinyanjui HB for Nyasani for the 1st – 8th Plaintiff/Applicant

1st Defendant/Respondent – Absent

2nd Defendant/Respondent – Absent

Irene and Njeri, Court Assistants