

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 60 OF 2014

ERIC KARIMI EUSTACE.....PLAINTIFF

VERSUS

JOHN MWAURA WAINAINA.....1ST DEFENDANT

LAND REGISTRAR MACHAKOS.....2ND DEFENDANT

RULING

1. In the Application dated 19th November, 2018, the Plaintiff is seeking to set aside the orders of this court that were issued on 13th April, 2018 dismissing the suit for want of prosecution.
2. The Application is premised on the grounds that the failure by the Plaintiff to attend court on 13th April, 2018 was unintentional; that the Applicant's advocate received the Notice to show cause why the suit should not be dismissed via post several months after the date that the matter came up for dismissal and that the Plaintiff should be given an opportunity to prosecute the suit. The Application was not opposed by the Defendants.
3. The record shows that this suit was filed on 24th July, 2014. Although the Defendants were served with Summons to Enter Appearance, it is only the 2nd Defendant who entered appearance and filed a Defence. Despite the suit having been filed in the year 2014, the Plaintiff never fixed the matter either for pre-trial directions or hearing. Indeed, the Plaintiff did not attempt to fix the matter for mention or hearing at all.
4. The Notice to show cause why the suit should not be dismissed for want of prosecution was duly served on the Plaintiff's advocate via post. The Plaintiff's advocate has admitted that he received the said notice. According to counsel, he received the notice four (4) months after the matter had already been dismissed.
5. Having admitted that the postal address on the Notice to show cause is indeed his, it is inconceivable that the notice to show cause dated 26th February, 2018 stayed at the post office for over four (4) months before being "posted" in the Plaintiff's postal address. The Plaintiff's advocate must have received the said notice before the matter came up for dismissal on 27th February, 2019.
6. Even if the Plaintiff's advocate received the notice way after the matter had been dismissed, the Plaintiff has not offered any explanation as to why he never fixed the matter for hearing since he filed the suit. Having not offered any explanation why he never fixed the matter for hearing for more than four (4) years, I find that the Application dated 19th November, 2018 is unmeritorious. The Application is therefore dismissed with no order as to costs. For avoidance of doubt, the suit stands dismissed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF MAY, 2019.

O.A. ANGOTE

JUDGE