



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC SUIT NO. 15 OF 2013**

**CHARITY M'MUCHIRI.....PLAINTIFF/APPLICANT**

**VERSUS**

**MWENDA M'RINGERA..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**KINYURU M'IKIARA..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The applicant, Charity M'Muchiri filed a Notice of Motion seeking reinstatement of this suit which was dismissed on 23.1.2018. The grounds in support of the application are that there was no notice to show cause served to her advocate on record prior to the dismissal. She avers that she is desirous of prosecuting this matter in view of the fact that she had made several invitations for date fixing only to be told that the file could not be traced.

2. **Order 17 rule 2 of the Civil Procedure rules** provides that;

***“In any suit in which no application or step has been taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed....”***

3. In **H.C.C.C NO.720 OF 2009, NBI Commercial and Admiralty Division**, the court had this to say on matters Notice to Show Cause;

***“I should think the question whether notice for dismissal of this suit was given under Order 17 rule 2 of the Civil Procedure Rules (hereafter CPR) is a matter of preliminary significance. First, there is no mandatory requirement under Order 17 rule 2 of the Civil Procedure Rules that a notice should be given to the plaintiff before a suit which offends the order is dismissed for want of prosecution. Equally, Order 17 rule 2 of the CPR uses the word “give” and not “serve”. To give notice is not the same thing as to serve notice within the context of the civil procedure. The distinction between the two terms is important because both are legal as well as technical but bear different meanings and entail different mechanisms albeit, however, both are intended to bring the matter at hand to the notice or attention of the party to be affected by the proceeding. “Give” in the context of Order 17 rule 2 of the Civil Procedure Rules denotes “to impart or confer by a formal act” whereas “serve” in the legal sense denotes “to make legal delivery of the court process”- See Black’s Law Dictionary, Ninth Edition on this. My own view, therefore, is that a notice under Order 17 rule 2 of the Civil Procedure Rules is deemed to have been given by the Court when it is placed in the official website of the Judiciary or in the cause list”.***

4. This matter was listed as number 29 in the cause list of 23.1.2018 before this court. The cause list had earlier on been sent to the official website of Kenya law via the official email address “causelists@kenyalaw.org and joungeo@kenyalaw.org on 18.1.2018. This settles the issue of service of notice to show cause.

5. Of paramount importance is whether the delay in the prosecution of this suit is inordinate and unexplained. In **Simion Waiti Kimani & Three others vs Equity Building Society (2010) eKLR Koome J** held that;

***“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....”***

6. This matter was last in court on 2.10.2013 before the dismissal on 23.1.2018 and not a single step was taken for the prosecution of the case in the intervening period. The matter marked time in court for a period of over 4 years! Applicant avers that the court file got lost. But there is not the slightest evidence of the file having been lost. Applicant has not availed any document to indicate that he inquired about the availability of the file. He has therefore not made the application in good faith.

7. In the circumstances, I find that the application is unmerited and the same is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 15<sup>TH</sup> MAY, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Murira holding brief for Kimathi K. for defendant

Kieti holding brief for Otieno for plaintiff

Plaintiff

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**