



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 128 OF 2012**

**ISAAC M.M. MUKHAMBALA.....PLAINTIFF**

**VERSUS**

**RICHARD OMBIMO.....DEFENDANT**

**RULING**

1. By an application dated 5/3/2019 and filed in court on 6/3/2019 the plaintiff sought for orders that the order dismissing the suit and all consequential proceedings be set aside to enable the plaintiff ventilate his case.
2. The grounds relied upon are the applicant's suit was dismissed while he was attending a call yet he had been in court all along on the day of the hearing, that he has substantial interest in the property and would suffer grave and irreparable loss of ancestral land if the orders do not issue; that his counsel arrived in court late only to find that the matter had been called out and that the hearing notice was only one day and this contributed to the late arrival of counsel for the applicant. The supporting affidavit reiterates the above grounds.
3. The respondent filed only grounds of opposition in response to the application. None of the parties filed any submissions but they relied on the filed documents.
4. I have considered the application and the supporting affidavit. The grounds in the replying affidavit, and particularly the ground that the applicant has a medical condition and that the hearing notice was served only one day earlier, are not in any event controverted by the respondent. This is a court of justice and the suits before it must be as far as practicable be dealt with on their merits.
5. I am for the above reasons inclined to exercise my unfettered discretion in favour of the applicant. I hereby grant the application dated 11/3/2019 in terms of **prayers (a) and (b)** thereof. The costs of the application shall be in the cause.

**Dated, signed and delivered at Kitale on this 6<sup>th</sup> day of May, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**6/5/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Nyamu for defendant

Sichangi (absent) for plaintiff

**COURT**

Ruling read in open court.

**MWANGI NJORGE**

**JUDGE**

**6/5/2019**