



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 104 OF 2010

EZEKIEL KIRWA

MZEE ARAP KITUR (*on their own behalf and*

on behalf of 13 Others*.....**PLAINTIFFS/APPLICANTS*

VERSUS

MICHAEL KIPRUTO MISOI.....1ST DEFENDANT/RESPONDENT

NIXON KIPSANG.....2ND DEFENDANT/RESPONDENT

JONATHAN SERONEI.....3RD DEFENDANT/RESPONDENT

JOSEA KAPTICH KIRWA.....4TH DEFENDANT/RESPONDENT

JOSEPH CHERUIYOT KUTUNY.....5TH DEFENDANT/RESPONDENT

NOAH K. BARNG'ETUNY.....6TH DEFENDANT/RESPONDENT

RULING

1. The suit herein was dismissed for want of prosecution on the morning of **7/2/2019** when Mr. Magut and his clients, the plaintiffs failed to attend court upon a notice to show cause. Later at **1.20 pm** on the same day Mr. Magut appeared at the tail end of the hearings for that day and sought the review of the orders. This court directed the filing of an application seeking review or setting aside of the dismissal order. It was filed and granted on **13/3/2019**.

2. I noted that in that application many of the grounds in support of that application were the same as those raised by Mr. Magut in response to the notice to show cause. I listened to Mr. Magut as he urged his client's response to the show cause notice and noted the main grounds that the plaintiffs had repeatedly suffered the misfortune of illness during the pendency of this suit which affected their ability to pursue the hearing, and documents in evidence of this were tabled before the court.

3. I was convinced that this was the case upon perusal of all material on the record in regard to the notice to show cause and I noted the ubiquitous presence of the plaintiffs for the times that this show cause notice came up for mention or hearing and I am also convinced that they are desirous of proceeding with the suit to conclusion.

4. I therefore vacate the notice to show cause and that good cause has been shown to exist to warrant an order that this suit shall proceed to full hearing on the merits. The plaintiffs shall however endeavour and obtain a priority date for this matter within **14 days** of this order so that the hearing may be expedited.

Dated, signed and delivered at Kitale on this 6th day of May, 2019.

MWANGI NJOROGE

JUDGE

6/5/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kiarie for applicant

Mr. Ingosi holding brief for Magut for defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

6/5/2019