



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 264 OF 2013**

**ANTHONY KIPKETER SEREM.....PLAINTIFF/APPLICANT**

**VERSUS**

**MOLYN CREDIT LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

The plaintiff prays for orders that this honourable court be pleased to reinstate this suit in the interests of justice. That a temporary injunction be issued to restrain the defendant by themselves, their agents or servants from selling, disposing, transferring or in any other manner dealing with all that parcel of land known as *NANDI/CHEMNOET/238*, pending the hearing and determination of the application herein. That a temporary injunction be issued to restrain the defendant, by themselves, their agents or servants from selling, disposing, transferring or in any other manner dealing with all that parcel of land known as *NANDI/CHEMNOET/238*, pending the hearing and determination of the main suit.

The application is based on grounds that the plaintiff filed this suit on 24.04.2013 through the firm of Kiplagat J. Misoi & Company Advocates. That the advocate handling the matter was not willing to prosecute the matter and always avoided the plaintiff's calls.

That the matter herein was listed for dismissal during service week on 7.12.2018. That the advocate on record did not inform the plaintiff that the matter was listed for dismissal. That as a result, the suit was dismissed on the 7<sup>th</sup> December, 2018 for want of prosecution. That the plaintiff now faces an imminent threat of being evicted from his home any time now that this suit has been dismissed.

That it is only through a full trial of the matter in question that the plaintiff will realize his right to a fair hearing as enshrined in Article 50(1) of the Constitution of Kenya, 2010. That it is not just that mistakes of counsel should not be visited upon an innocent litigant. That it is only right and just that this suit be reinstated and pursued to its logical end. That the defendant shall not suffer any prejudice if the suit is reinstated. That it is in the interest of justice to have the suit reinstated. The gist of the supporting affidavit is that his advocate did not inform him of the hearing date.

In his reply, the defendant states that the plaintiff lost any conceivable interest in the suit. They have neither attended the matter during mention and hearing. The plaintiff's advocate was served but did not attend. No explanation was given for failure to attend.

This court finds that this is one of the matters where mistake of counsel should be visited on the party as, the plaintiff does not explain where he has been since 2013 when the matter was last actually in court.

Where a party is served and does not attend and fails to give sufficient cause, the matter ought to be dismissed. This matter stands dismissed. Application dated 28.1.2019 is dismissed with costs.

**Dated and delivered at Eldoret this 27<sup>th</sup> day of June, 2019.**

**A. OMBWAYO**

**JUDGE**