



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAROK

ELC SUIT NO. 111 OF 2017

FORMERLY NAKURU ELC NO. 9 OF 2015

KERETO OLE NTERESIAN.....PLAINTIFF

-VERSUS-

DISTRICT LAND REGISTRAR NAROK.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

DIRECTOR OF LAND ADJUDICATION

AND SETTLEMENT.....3RD DEFENDANT

JAMES NDEGU KUSERO.....4TH DEFENDANT

RULING

By an Application dated 5th February, 2019 and brought under Order 12 Rule 7 of the Civil Procedure Rules and under Section 3A of the Civil Procedure Act the Applicant sought for orders that pending the hearing and determination of the suit there be a stay of order of dismissal dated 3rd December, 2018 and that there also be an order to set aside the order of 3rd December, 2018 dismissing the Application dated 15th December, 2018. The Application was based on the grounds that the Applicant/Defendant case was closed before he could ventilate it. That the Defendant's/Applicant's previous Advocates were to blame and he has since hired a new advocate and that if the Application dated 15th December, 2018 is not reinstated he will lose a parcel of land to which he holds title to.

The Application was also supported by the Affidavit of the Applicant in support of the grounds aforesaid.

The Applicant contends that he had applied to the court vide a Notice of Motion dated 15th November, 2018 when the court closed his case and that he was shocked when he learnt that the Application was dismissed for want of attendance and prosecution of the said Applicant.

The Applicant further averred that the failure not to prosecute the Application was that of his advocate and hence he should not be penalized for the same.

The Applicant contends that on the event that the aforesaid Application is not heard he will lose his land and it will serve in the interest of justice to be allowed to prosecute.

The Application was opposed by the Plaintiff by way of grounds of opposition and contend that the Application was prejudicial to the Plaintiff as this is an old matter and that the instant Application was brought after a long delay after he was given another chance by the court. The Plaintiff contends that he can't be made to suffer because of the negligence of the Defendant's counsel and no evidence was shown of action he took against the said advocate.

The plaintiff further faults the Application on the grounds that it is requesting the court to sit on its own Appeal.

The Application was heard and disposed off by way of written submissions. The 4th Defendant/Applicant contends that the dismissal of his Application was occasioned by the failure of his advocate to attend court. The Plaintiff/Respondent contend that rather than file the instant application recourse to the Applicant was only by way of Appeal and therefore the court lacks jurisdiction. The Respondent in support of this relied on the provision of order 12 Rule 7 and Section 75 of the Civil Procedure Act.

The Respondent also contended that the Applicant must show sufficient cause to the court for his inability to attend court and for the above reasons he feels that the Applicant has not satisfied the court on why the Application should be allowed.

I have carefully considered the Application before me and the submissions filed by the counsel. The Respondent by the dint of the provisions of Order 12 (7) and Section 75 of the Civil Procedure Act contends that the court lacks jurisdiction to entertain the instant application and since Jurisdiction is what grants the court powers to entertain any application, I wish to dispose this point before addressing the other issues raised in the Application. From the record of the statute the court has jurisdiction to hear the determine the instant suit.

In view of the above I find that it shall serve the interest of justice to accord the Defendants the chance to be able to reinstate their case and I will allow the Notice of Motion dated 5th February, 2018 and I thus set aside the orders of 3rd December, 2018 dismissing the Notice of Motion.

The Applicant in the matter do pay the Respondents throw away costs of kshs. 50,000/-.

DATED, SIGNED and DELIVERED in open court at NAROK on this 30th day of July, 2019

Mohammed Kullow

Judge

30/7/19

In the presence of: -

Mr Kinyanjui for the Respondent

N/A for the Applicant

CA:Chuma/Kimiriny