

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 121 OF 2014

JOHN KULITU WAKHU.....PLAINTIFF/APPLICANT

VERSUS

JOHN IKHUTA MALALU.....DEFENDANT/RESPONDENT

RULING

The application is dated 21ST February 2019 and is brought under Section 3a of the Civil Procedure seeking the following orders;

1. That the orders made herein dismissing this suit be set aside or be reviewed
2. That costs of this application be in the cause.

It is grounded on the annexed affidavit of John Kulitu Wakhu the applicant and on the grounds that, the applicant's suit was dismissed for want of prosecution and for his non-attendance. The applicant has been desirous to prosecute this matter on merit. That due to illness he lost contact with his advocates. That the applicant has a good and prima facie case as against the defendant.

The respondent submitted that, the suit herein was dismissed for want of prosecution on the 9th November 2017. That the plaintiff herein is his neighbour and has been seeing him around. That the plaintiff has been indolent for two years. That the application lacks merit and should be dismissed with costs.

This court has considered the application and the submissions therein. I have perused the court file and find that this suit was dismissed on the 9th November 2017. It is on the 3rd July 2019 that the present application was filed. This case was filed way back in 2014. And the land court has been sitting continuously from 2017. I find that there is inordinate delay in filing this application. Reasons advanced for non attendance are not acceptable.

In the case of Utalii Transport Company Ltd & 3 Others vs NIC Bank & Another (2014) eKLR, the court held that it is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court. The decision on whether the suit should be reinstated for trial is a matter of justice and it depends on the facts of the case. In Ivita v Kyumbu (1984) KLR 441, Chesoni J as he then was, stated that the test is whether the delay is prolonged and inexcusable and if justice will be done despite the delay. Justice is justice for both the plaintiff and the defendant. I find this application has no merit and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 24TH JULY 2019.

N.A. MATHEKA

JUDGE