

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO.209 OF 2015

VERONICA WANGARE.....PLAINTIFF

VERSUS

DAVID WAMBUGU NJAAGA.....1ST DEFENDANT

JOSEPH KORIR.....2ND DEFENDANT

RULING

This ruling is in respect of an application dated 24th April 2019 by the plaintiff applicant seeking for the reinstatement of an application dated 24th October 2018 which was dismissed for non-attendance by Counsel for the plaintiff.

Counsel for the plaintiff relied on the grounds on the face of the record and the supporting affidavit filed in court. Counsel for the applicant submitted that he was in Court No. 1 and he entered the court when the application had just been dismissed. Counsel went ahead to argue the merits of the dismissed application and urged the court to allow the reinstatement.

Both Counsel for the defendants opposed the application as having not been filed in a timely fashion as there was inordinate delay. Reinstatement of a dismissed application by the court is discretionary and if the court is satisfied that the reasons given are adequate then it can exercise such discretion in favour of the applicant.

I find that the reasons advanced adequate to warrant the court to allow the reinstatement of the application for hearing. I notice that the submissions by Counsel of the applicant were as if he was arguing the dismissed application before it has been reinstated. However, I find that there was inordinate delay in filing the application and therefore the applicant must pay costs for the application.

I therefore allow the application for reinstatement and that the plaintiff should fix the same for hearing without delay. Plaintiff to pay Kshs. 10, 000/ to the defendants before the next hearing date.

Dated and delivered at Eldoret on this 18th day of July, 2019.

M.A. ODENY

JUDGE

RULING READ IN OPEN COURT in the presence of Mr.Ngetich holding brief for Mr.Omusundi for 1st defendant. Mr.Kigen holding brief for Mr.Miyienda for Plaintiff and in the absence of Mr.Yego for 2nd defendant.

Mr.Mwelem – Court Assistant