



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT AND LAND CASE NO. 32 OF 2017

RUTH CHERUIYOT.....1ST PLAINTIFF

HENRY CHERUIYOT.....2ND PLAINTIFF

VERSUS

SAMUEL SOITANAE OLE KORIATA.....1ST DEFENDANT

PETER OLE KORIATA.....2ND DEFENDANT

RULING

By an Application dated 5th December, 2018 the Plaintiff/Applicant sought for orders to set aside and reinstatement of their suit that was dismissed for want of prosecution which application was based on the grounds that they have been keen and vigilant to prosecute the suit and that they were never served with the Notice To Show Cause why the suit should not be dismissed for want of prosecution.

The Application was supported by the Affidavit of Mabachi Stephen who deponed that they sent a letter to the court on 11th April, 2017 to inquire about the suit herein but did not get any response and when they wanted to have the matter fixed for hearing that they learnt of its dismissal and that prior to the above they did not receive a Notice To Show Cause and if the orders for dismissal is not set aside, they will suffer loss.

The application was opposed by the Respondents by way of grounds of opposition and stated that the Applicants are guilty of laches as the Application was filed on 5th December, 2017 when the suit was dismissed on 16th March, 2017 and that they have never been keen to prosecute the same.

I have considered the application before me and the submissions filed and the question of reinstatement of a suit is now settled. In the instant application I find that there was no inordinate delay in the institution of the application to set aside the order for dismissal and further that since the applicant is now before the court I will accord them the benefit of doubt taking into account that the matter before the court is one involving land it will be just and fair and in the interest of justice the Applicant is accorded another opportunity.

From the above reasons, I will allow the Notice of Motion dated 5th December, 2018 and reinstate the suit and order that the Applicant do fix the suit for hearing within the **next 60 days**.

DATED, SIGNED and DELIVERED in open court at NAROK on this 15th day of July, 2019

Mohammed Noor Kullow

Judge

15/7/19

In the presence of: -

Counsel for the Defendants-present

N/A for the Plaintiffs

CA:Chuma

Mohammed Noor Kullow

Judge

15/7/19