

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1222 OF 2007

UNION OF KENYA CIVIL SERVANTS.....PLAINTIFF

VERSUS

JOHN SILAS NYAMATO.....1ST DEFENDANT

DONALD KAMURU KIBERA.....2ND DEFENDANT

JOSEPH BONNIE MUNYOKI.....3RD DEFENDANT

RULING

This suit was commenced vide the plaint dated 22/08/2007 through which the Plaintiff sought orders that the Defendants submit proper accounts of all the assets of the union to the Plaintiff and that they furnish a true account of all the rental income emanating from the property known as land reference number 209/674 situate on Tom Mboya Street, Nairobi from the time of their appointment as trustees to the date of its sale. Further, the Plaintiff sought an order that the suit property be transferred back to the Plaintiff and a declaration that the Plaintiff had the right to take over possession, management, control and operations of the suit property. In the alternative, it sought an order that the Defendants duly compensate the Plaintiff for the true worth of the property based on its market value, as well as the costs of the suit.

The suit was dismissed by this court on 02/10/2018. The Plaintiff brought the application dated 13/05/2019 seeking to review and set aside the order made on 02/10/2018 dismissing the Plaintiff's suit. The Plaintiff also sought an order to reinstate the Plaintiff's suit and costs of the application.

The application was based on ground that at the time the Defendants served as the Plaintiff's officials and trustees, they irregularly and unlawfully sold off the suit property to 3rd parties in unauthorised dubious circumstances at an undervalue of Kshs. 16,000,000/= yet the property had a market value of Kshs. 80, 000,000/= in 2000, causing the Plaintiff to suffer loss and damage. The Plaintiff also urged that the suit was dismissed *suo moto* by this court without prior notice to the parties.

The application was supported by the supporting affidavit of Ligunya Stephen Biko counsel for the Plaintiff. He deponed that the Plaintiff is aggrieved by the dismissal of the Plaintiff's case because it was premature, unfair and punitive having inadvertently omitted to consider the pertinent fact and evidence of the Plaintiff's multiple attempts to expedite the hearing of the case. He deponed further that the court did not take into consideration the fact that the Plaintiff was present in court on 02/10/2018. Further, that the dismissal order was irregular having been made without prior notice to the parties to show cause why the suit should not be dismissed in line with Order 17 Rule 2 Civil Procedure Rules. He deponed that the court did not consider that the Plaintiff had duly complied with pre-trial procedures and had taken steps in the suit, the last being taking out a mention date on 02/08/2018, which was two months prior to the dismissal. He deponed that the dismissal order was punitive as the Plaintiff diligently took all reasonable steps to serve the Defendants including seeking and obtaining leave to effect substituted service by advertisement in the newspaper. Collecting funds for placing the advertisement was an arduous task considering the financial constraints the Plaintiff faced at the time. He annexed copies of a ruling and orders issued in **Nairobi ELRC cause 1987 of 2017 Lawrence Nyaguti Ochieng and 7 Others v UKCS**, showing the Plaintiff's management crisis and financial constraints. He deponed that that the delay in prosecuting the suit was occasioned by management wrangles and financial bottlenecks that bedeviled the Plaintiff at the time. He also deponed that the Plaintiff and its hundreds of members will suffer grave and irreparable injustice and unmitigated prejudice if reinstatement is refused because they will lose their constitutional right to be heard. The application was not opposed.

The court has considered the Plaintiff's application. On 02/10/2018, when this court dismissed this suit, the Plaintiff had not complied with directions to serve the Defendants by substituted service as directed by the court. The Plaintiff did not show sufficient cause why it did not serve the Defendants either. On 15/05/2019 when this application was brought before the court, the court directed the Plaintiff to serve the application for inter parties hearing on 22/7/2019. There is a return of service on record showing the Defendants were served with this application.

The court sets aside the orders issued on 2/10/2018 on condition that the Plaintiff sets down the suit for hearing within 90 days of the date of this ruling, failing which the suit will stand dismissed. Costs shall be in the cause.

Dated and delivered at Nairobi this 8th day of August 2019

K.BOR

JUDGE

In the presence of: -

E. Oange holding brief for E. Ochieng for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendants