



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 69 OF 2014

PHYLIS AMWAYI OKUYOSI.....PLAINTIFF

VERSUS

PAUL MUSYOKA KALOKI.....DEFENDANT

RULING

1. By an application dated **17/6/2019**, the plaintiff seeks reinstatement of this suit which was dismissed on **24/7/2018** for want of want of prosecution. She also prays for costs of the application be awarded to the applicant.

2. The grounds she relies on are that on the **15/1/2015** this case was stood over generally to enable the defendants to enjoy the legal representative of the deceased as a third party; that on **29/6/2015** the matter was stood over generally for the second time pending the hearing and determination of citation proceedings in **Citation No. 32 of 2015** in the Kitale High Court to facilitate substitution; that the Citation was determined on **3/4/2019** after the dismissal of this suit; that the applicant was ready and willing to prosecute this suit but was only complying with the court's directions on having the matter stood over generally; that the applicant was never served with a Notice to Show Cause Why the suit was to be dismissed and hence she did not attend court and that the defendant will not suffer any prejudice if the orders prayed for are granted.

3. The application is supported by affidavit of the plaintiff sworn on **17/6/2019**.

4. Though the application was served, it is not opposed.

5. The advocates on the record for the plaintiff in this matter before the dismissal of the suit were Milimo Muthomi & Co. Advocates. The advocates who have filed the current application are Apollo Ambutsi & Co. Advocates. There is no application for leave for Apollo Ambutsi & Co. Advocates to come in as advocates for the plaintiff yet this matter is past judgment stage, for in my view the dismissal of the suit ended the matter. Neither is there any consent filed between the outgoing advocate and the proposed incoming advocate. The application is incompetent for failure to comply with **Order 9 Rule 9** of the **Civil Procedure Rules**.

6. In the light of the above I hereby summarily strike out the application with costs for failure to comply with **Order 9 Rule 9** of the Civil Procedure Rules.

Dated, signed and delivered at Kitale on this 30th day of September, 2019.

MWANGI NJOROGE

JUDGE

30/9/2019

Coram:

Before; Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kitembe for the Applicant

N/A for the Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/9/2019