



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. 34 OF 2011**

**ISAYA KIMATHI.....PLAINTIFF**

***VERSUS***

**NICHOLAS MURIUNGI MBURUGU.....1<sup>ST</sup> DEFENDANT**

**JULIA KARIUNTU MUGAMBI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Vide the application dated 20.11.2018, the plaintiff in ELC No. 51 of 2011 (Isaya Kimathi) sought to have the suit reinstated as the same was dismissed on 12.2.2018. The grounds in support of the application are on the face of the notice of motion and in his supporting affidavit.
2. Applicant avers that he is the plaintiff in ELC no. 51/2011 which suit was consolidated with ELC 34 of 2011 on 11.7.2017. A notice to show cause why the suit should not be dismissed was issued and the suit was dismissed on 12.2.2018.
3. Applicant avers that he was not a party in ELC 34/2011 hence he was not aware of the date of 12.2.2018. He further states that he stands to be prejudiced if this application is not allowed as no directions were given in respect of file no. 51/11.
4. I find that on 11.7.2017 directions were given in ELC No. 51/2011 whereby the two files ELC 34/11 and ELC 51/11 were consolidated and the running file was to be ELC 34/11 as no. 34/11 was the lead file. I am hence in agreement with applicants submissions that he was prejudiced by the order of dismissal.
5. Further, I note that none of the respondents have opposed the application. I am therefore inclined to allow the application dated 20.11.2018. The costs of the application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2019**

**IN THE PRESENCE OF:-**

C/A: Kananu

Ogoti for applicant

Applicant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**