



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 207 OF 2011

CHARLES KARANJA NJUGUNA

JOSEPH NGUGI KABIRU

JANE WAMUYU NDIRITU (*Suing on their behalf and on*

behalf of 146 others all known as JUMBO COMMUNITY

SELF HELP GROUP).....**PLAINTIFFS**

VERSUS

FOSTER TRADING COMPANY LIMITED.....**1ST DEFENDANT**

SIMON MIGWI NDEGWA.....**2ND DEFENDANT**

PETER MAINA NDEGWA.....**3RD DEFENDANT**

JUSTUS WAINAINA NJUGUNA.....**4TH DEFENDANT**

THE ATTORNEY GENERAL *a representative of*

REGISTRAR OF TITLES.....**5TH DEFENDANT**

RULING

1. In the Notice of Motion dated 6th September, 2018, the Plaintiffs are seeking for the following reliefs:

a. That this Honourable Court be pleased to set aside the orders dismissing this suit.

b. That this Honourable Court be pleased to reinstate the Plaintiffs' suit.

c. That this Honourable Court be pleased to grant leave for the firm of Andrew Loketo Kariu Advocates to come on record for the Plaintiffs.

d. That the costs of this Application be in the cause.

2. In his Affidavit, the Plaintiffs' Chairman deponed that on 14th August, 2018, the Plaintiffs instructed the firm of Loketo Kariu Advocates to come on record for the Plaintiffs; that they later learnt that the suit had been dismissed for want of prosecution and that their former advocate was never served with the Notice to show cause.

3. According to the Plaintiffs, the dismissal of the suit was premised on lack of full disclosure on the part of the Defendants who attended court; that this suit was supposed to be mentioned with file number ELC. No. 285 of 2017 for directions as per the orders of the court made on 21st June, 2017 and that they were waiting for their former advocate to inform them that the two files had been transferred from the ELC, Nairobi to the ELC, Machakos.

4. The Plaintiffs' Chairman finally deponed that the inaction of their advocate should not be visited upon the Plaintiffs; that the court erred

by not issuing a Notice for a case conference after the closure of pleadings and that the suit should be reinstated. The Application was not opposed.

5. This matter was commenced by way of a Plaint dated 12th August, 2011 which was filed in this court on the same day. The Defendants filed a joint Defence dated 21st September, 2011 on 23rd September, 2011.

6. The record shows that since the matter was filed on 12th August, 2011, the same was never listed even for a single day, either for mention for directions or for hearing. Indeed, the first time the matter came up in court was on 23rd February, 2018 for dismissal of the suit for want of prosecution. On that day, the Defendants' advocate was in court and requested to be given more time to respond to the Notice to show cause. The court allowed his oral Application and slated the matter for mention on 8th March 2018. On 8th March, 2018, the Defendants' advocate applied for the dismissal of the suit.

7. The Notice to show cause dated 10th January, 2018 was addressed to the Plaintiffs' former advocates, Ms. A.S. Kuloba & Wangila Advocates. The said advocates have not denied by way of an Affidavit that they were not served with the Notice to show cause. The Plaintiffs cannot depone on their behalf considering that it is not them, but their advocate, who was served with the Notice to show cause.

8. In any event, the Plaintiffs have not given any plausible explanation why this matter was never fixed for hearing or mention even for a single day since it was filed in the year 2011. The mere fact that there is a related matter involving the same parties and the suit land cannot in itself be a reason as to why the suit cannot be dismissed for want of prosecution. In the absence of a formal order consolidating this suit and ELC. No. 285 of 2017, I find the Plaintiffs' Application dated 6th September, 2018 to be unmeritorious.

9. The Application dated 6th September, 2018 is therefore dismissed with no order as to costs. For avoidance of doubt, this suit stands dismissed as ordered by the court on 23rd February, 2018.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF SEPTEMBER, 2019.

O.A. ANGOTE

JUDGE