



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 226 OF 2008

MARTHA KILONZO.....PLAINTIFF/APPLICANT

VERSUS

KAMULA MUKITI.....1ST DEFENDANT/RESPONDENT

MUSYOKI KILONZO.....2ND DEFENDANT/RESPONDENT

MUTUA KILONZO.....3RD DEFENDANT/RESPONDENT

ANNA KILONZO.....4TH DEFENDANT/RESPONDENT

RULING

1. In the Application dated 3rd April, 2019, the Plaintiff is seeking for the following orders:

a. That this court be pleased to set aside the order made on 27th March, 2017 by Hon. Justice C. Mbogo dismissing the suit for want of prosecution.

b. That this suit be reinstated.

c. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that this suit was filed by his former advocate in the year 2006; that his advocate kept on briefing him on the progress of the suit until the year 2011 and that in the year 2018, he differed with his advocate.

3. According to the Plaintiff, in the year 2019, he instructed the current advocate to take over the matter and that on perusal of the court file, he discovered that the matter was dismissed on 27th March, 2017 for want of prosecution.

4. The Plaintiff finally deponed that he was unaware that the matter was scheduled on 27th March, 2017 for dismissal; that neither his advocate nor the Defendants' advocate attended court on 27th March, 2017 and that he is desirous, ready and able to prosecute the suit without any further delay.

5. The Defendants did not oppose the Application. The Plaintiff's advocate did not file submissions but reiterated the contents of the Affidavit.

6. As correctly deponed by the Plaintiff, this suit was filed on 1st December, 2006. The record shows that the last time the matter was in court was on 24th November, 2011 when the court directed that the matter be fixed for hearing in the registry. However, those directions were never complied with for six (6) years, until when the suit was dismissed for want of prosecution on 27th March, 2017.

7. The Plaintiff has deponed that the last time his advocate updated him about the position of the case was in the year 2011. If that is the case, it means that between the year 2011 and 2017 when the matter was dismissed, the Plaintiff did not make a follow up, either with his advocate or the court registry to ascertain the progress of his case.

8. This court has held on numerous occasions that it is the responsibility of a litigant to keep himself abreast of any matter in court, and where his advocate does not progress the matter, to either appoint another advocate, or prosecute the matter himself. An indolent litigant cannot turn around and blame his advocate for not prosecuting his case expeditiously when he does not show any interest or diligence on his part.

9. The Plaintiff has not given any explanation why he did not take any action in progressing the suit between the years 2011 to 2017. If he believes that his advocate was negligent in prosecuting the suit, then he should seek damages from the said advocate. However, this court having dismissed the matter for want of prosecution cannot revive the same due to his indolence.

10. For those reasons, the Application dated 3rd April, 2019 is dismissed with no order as to costs. For avoidance of doubt, the suit stands dismissed.

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

O.A. ANGOTE

JUDGE