

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 149 OF 2011

SIDI CHEA MSANZU.....PLAINTIFF

VERSUS

GOLDSON OF CHESHALE LTD.....DEFENDANT

RULING

1. The Plaintiff instituted this suit vide a Plaint dated and filed herein on 16th September 2011 seeking cancellation of the Defendant's name from the register of Plot No. Ngomeni Squatters Settlement Scheme/1363. The Defendant never entered appearance and the matter proceeded by way of formal proof on 16th June 2014 when the Plaintiff testified.

2. As it were, the Plaintiff did not have the original title deed in Court and at the conclusion of her testimony, the Plaintiff's Counsel applied for an adjournment to another date to enable them produce the original title deed. The Honourable Angote J then seized of the matter allowed the adjournment.

3. No further action was taken in the matter for quite some time and on 25th September 2015, it came up for Notice to show cause why the suit should not be dismissed for want of prosecution under the Provisions of Order 17 Rule 2 of the Civil Procedure Rules. It was spared dismissal when Counsel explained that the Plaintiff was unwell.

4. Again no action was taken for two years and on 21st April 2017 it was again listed for dismissal for want of prosecution. On that date, there was no appearance for either of the parties and the suit was accordingly dismissed for want of prosecution.

5. The Plaintiff is now by this application dated 18th January 2018 praying that the Court be pleased to vary and/or set aside the Orders dismissing the suit and that the suit be set down for hearing and determination. It is her case that she was not served with the Notice to show cause and that the orders of dismissal are highly prejudicial to her case.

6. I have considered the Plaintiff's application and the fact that she had all but testified and concluded her case herein. I note that the Defendant never entered appearance and will not be prejudiced in any way if the suit is reinstated.

7. Accordingly, I allow the Plaintiff's application and direct that this matter be prosecuted within 90 days from today.

Dated, signed and delivered at Malindi this 20th day of September, 2019.

J.O. OLOLA

JUDGE