



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC SUIT NO.1146 OF 2013

FORMERLY HCC NO.217 OF 2007

ATHMAN MPONDA1ST PLAINTIFF

ABDULAZIZ MOHAMMED.....2ND PLAINTIFF

DAVID OMANGA.....3RD PLAINTIFF

(Suing on their behalf and on behalf of 110 others)

VERSUS

NATIONAL HOUSING CORPORATION.....DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 28/5/2018 which seeks to set aside the order of the court made on 22/5/2018. The applicant who claims to be representing over 100 other persons states that on the 22/5/2018, he came to court late and found that the trial Judge had cleared the morning day's work. He inquired from the clerk as to what happened to his matter. The court clerk informed him that the matter had been adjourned to 2.30 pm.
2. The applicant claims that at 2.30 pm, he came back but the court was not sitting. He went to the registry where he was informed that his suit had been dismissed for non-attendance. He now contends that he was condemned unheard and that the order of 22/5/2018 should be set aside so that he can be heard.
3. The applicant's application was opposed by the respondents based on a relying affidavit sworn on 14th August 2018. The respondent contends that the applicant is not being candid with the court and that he is purporting to act for over 100 persons who have not intimated their intention to oppose the dismissal of the case. The respondent further contends that as the applicant is not an advocate, he cannot purport to act for the rest of the plaintiffs.
4. I have considered the applicant's application as well as the opposition thereto by the respondent. I must say as the outset that the applicants' application is misconceived. An application for dismissal of this suit had been filed by the respondent. This application was duly served upon all the plaintiffs. When the application for dismissal came for hearing on 22/5/2018, I noticed that the affidavit of service was lengthy. I therefore adjourned the application to 2.30 pm on the same day.
5. I later went back to open court at 2.35 pm. I heard the application for dismissal of the suit for want of prosecution and as the application had not been opposed, I delivered a ruling on the spot dismissing the plaintiff's suit for want of prosecution. The plaintiff's suit was not dismissed or non-attendance as the applicant claims. The application was heard in open court.
6. The applicant had filed the application in person. When he engaged the services of a lawyer, the lawyer was given time to amend the notice of motion. Despite the lawyer for the applicant being given time, there was no amendment to the motion. The advocate later proceeded with the application as it was. The way the application is cannot succeed. The application is not seeking review of the ruling of 22/5/2018. The applicant is instead seeking setting aside and is not being candid when he claims that the matter was dealt with in chambers.
7. Some plaintiffs withdrew their suit and some swore affidavits stating that they had nothing to do with this suit. This suit was filed in 2007 and the plaintiffs lost interest when they lost an application for injunction. I therefore find that the applicant's application lacks merit. The same is dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* this *3rd* day of *October 2019*.

E.O .OBAGA

JUDGE

In the presence of :-

M/s Mengesa for applicants

M/s Rono for Mr. Modi for respondents

Court Clerk : Hilda

E.O OBAGA

JUDGE

3/10/2019