



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 53 OF 2015

**RODA ADHIAMBO OMOLLO.....PLAINTIFF
(ADMINISTRATOR ad litem of the estate of MARTIN MBUYA ADERO)**

VERSUS

JUDITH ATIENO OCHIEL.....1ST DEFENDANT

JOSIAH OSEWE ESTATE.....2ND DEFENDANT

RULING

1. Application is dated 29/3/2019. The applicant seeks orders that:

a) Spent.

b) The honorable court be pleased to reinstate this suit that was dismissed on the 7/3/18 and the same be fixed for hearing for the main suit.

c) The cost of this application be provided.

2. The application is based on the following grounds:

a) "The matter was dismissed on the 19/12/2017.

b) That there was no notice of dismissal that was issued.

c) That there had been difficulty in tracing the file in the court registry hence causing frustration in prosecuting the matter.

d) That as a result of the dismissal the plaintiff stands to suffer a lot as she has not been able to prosecute her case

e) That the Applicant seeks the indulgence of this honorable court to be granted an opportunity to prosecute his case.

f) The respondents will not be prejudiced at all and it is in the interest of justice that the orders sought to be granted.

3. The application is supported by the affidavit of Roda Adhiambo Omollo who states that:

1) The matter herein was dismissed for want of prosecution on the 19th day of December 2017.

2) She was never aware that the matter had been fixed for notice to show cause why the same should not be dismissed, she was never served with a notice for dismissal and the same time, she could not reach Kisumu Town to confirm because of the election violence.

3) She is informed by her advocate which information she verily believes to be true that her effort to trace the court file had been futile for a long time and therefore there was a difficulty in making efforts to follow up the file.

4) She is desirous to prosecute the case to its logical conclusion. She prays that the order dismissing this suit be set aside, the suit be reinstated and she be allowed to prosecute this case to its logical conclusion on its merit.

4. The application is merited as the court record indicates that the parties could not be served with notice to show cause under **Order XVII Rule 2.**

5. The suit herein is hereby reinstated. Costs in the cause.

Orders accordingly.

A. O. OMBWAYO
ENVIRONMENT & LAND
JUDGE

DATED AND DELIVERED THIS **18TH** DAY OF **OCTOBER, 2019.**

In the presence of:

No appearance for the Plaintiff

No appearance for the Defendant

A. O. OMBWAYO
ENVIRONMENT & LAND
JUDGE