



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 128 OF 2017

HARRISON MURAGURI NDONGA NEPHAT.....APPLICANT

VERSUS

HARRISON KAMORE KAGUTU.....RESPONDENT

RULING

1. This ruling arises out of a dismissal of an application brought under certificate of urgency filed on the 25/4/19. When the application came up before the judge in chambers on the 25/4/19, the Court ordered that the application be served for interpartes hearing on the 9/5/19.
2. Come the 9/5/19 the parties were absent in Court. No reason was given for their absence. The Court consequently dismissed the application for non-attendance and want of prosecution.
3. The Applicant filed this application on the 12/7/19 seeking interalia that the Court set aside the dismissal orders of the 9/5/19 and reinstate the application dated the 11/4/19 filed on the 25/4/19.
4. The application is supported by the affidavit of the Applicant where he deposed that he and his Counsel on record failed to attend the hearing of the application. He stated that by the time they realized that directions had been given by the Court, it was on 15/5/19 by which time the Court had dismissed the application on the 9/5/19. That thereafter the Court was not sitting on account of the judge being on leave.
5. That the absence of both the Applicant and his Advocate in Court on the 9/5/19 was not intentional but it arose out of mistake and ignorance. He urged the Court to grant his orders.
6. The Respondent failed to file any response to the application hence it is unopposed.
7. The power vested in the trial Court to set aside the order dismissing the suit for non-attendance is contained in the provisions of Order 12 Rule 7 of the Civil Procedure Rules. It is a discretionary power that is exercised by the Court.
8. Going by the explanations given by the Plaintiff and guided by Article 159 of the Constitution to do substantive justice, I grant the application on condition that the matter be listed for hearing within the next 14 days from the date hereof in default of which it stands dismissed.
9. Costs shall be met by the Applicant.
10. **It is so ordered.**

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28TH NOVEMBER 2019.

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Plaintiff/Respondent: Present in person. Advocate is absent.

Ms Chumba HB for Mr Muguku for the Defendant/Applicant

Ms Irene and Ms Kuyaki, Court Assistant