



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. NO. 175 OF 2014

EUNICE A. NDEGWA.....PLAINTIFF

VERSUS

PAUL OCHIENG ACHAYO.....DEFENDANT

RULING

1. The application before court is dated 26/3/2019 whose gist is that the suit to be reinstated. The suit was dismissed on 30/5/2018 for want of prosecution. The applicant relies on **Article 159 of the Constitution of Kenya and Section 1A and 2A of the Civil Procedure Rules.**

2. He states that neither the plaintiff nor Counsel were served with the notice to Show cause and **that the Plaintiff has always been ready to proceed with the hearing of the suit if not for the defendant's pending application by counsel to cease acting. That the plaintiff has an arguable case with high chances of success and it is in the best interest of justice that this suit be reinstated so that it can be heard and determined on merit.**

3. **That no Notice to show cause why the suit should not be dismissed was served on the Applicant's Advocates to enable them file a suitable deposition to explain the delay.**

4. **That it is in the interest of justice and fairness that the orders sought herein are granted and that no prejudice will be suffered by the Defendants/Respondents if the orders sought herein are granted.**

5. **That the Court has jurisdiction to hear the application and to grant the orders sought.**

6. **That the Plaintiff only came to learn of the dismissal of this year through an attempt to mention this matter for directions.**

7. In the supporting affidavit, the applicant states that the application by the defendant's counsel to cease acting stilled the matter and that they have no idea whether the advocates for defendant have prosecuted the application. He states that the process server did not serve his office with notice to show cause.

8. Paul Ochieng Achayo states in the replying affidavit that the applicant should have exercised due diligence to know that he had an advocate on record and fix the matter for hearing.

9. I have considered the application and the submissions in rival and do find that the main issue is service of notice to show cause.

7. Edward Victoree Odhiambo states that he served the Notice to Show Cause upon Otieno Okeyo & Company advocates. However, I have looked at the Notice to Show Cause and do find that the same was amended as it was indicated to come for hearing on 14/10/2017 at 8.30 a.m. but amended to come for hearing on 26/10/2017. It is not clear as to who amended it. Moreover, there is no indication on the face of the notice to show cause by stamp that the plaintiff or his counsel were served with the notice to show cause. No explanation is given by the process server why the notice was not stamped.

8. For the above reasons I do reinstate the suit for hearing. Costs in the cause. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 15TH DAY OF NOVEMBER, 2019.

In the presence of:

N/A FOR PLAINTIFF

N/A FOR DEFENDANT

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE