



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 406 OF 2017**

**PENINA MONICA MUTUNGI.....1<sup>ST</sup> PLAINTIFF**

**MERCY NDANU MUTUNGI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NICHOLAS NYAMWEYA NYARIKI.....1<sup>ST</sup> DEFENDANT**

**NYAMWEYA MAXWELL NYAATA.....2<sup>ND</sup> DEFENDANT**

**JULIANA MUTINDA MUTHOKA.....3<sup>RD</sup> DEFENDANT**

**GEORGE ONGERA OCHANDA.....4<sup>TH</sup> DEFENDANT**

**KATELEMBO ATHIANI MUPUTI FARMING &**

**RANCHING CO-OPERATIVE SOCIETY LTD.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 11<sup>th</sup> April, 2019, the Plaintiffs are seeking for the following orders:

***a. The orders made on 5<sup>th</sup> April, 2019 be set aside and the suit be reinstated for hearing on merit.***

***b. The Respondent to bear the costs of this Application.***

2. The Application is supported by the Affidavit of the Plaintiffs' advocate who has deponed that the matter was fixed for Notice to show cause why it should not be dismissed for want of prosecution on 5<sup>th</sup> April, 2019; that the Notice to show cause was delivered to his law firm offices on 4<sup>th</sup> April, 2019 in the evening and that he only became aware of the Notice to show cause on 5<sup>th</sup> April, 2019 in the morning.

3. The Plaintiffs' advocate deponed that he rushed to court the same morning from Nairobi and arrived in court at around 10.30am by which time the matter had been called out and dismissed in his absence; that the 1<sup>st</sup> to 4<sup>th</sup> Defendants have never entered appearance in the matter and that the Plaintiffs are keen in prosecuting the matter. The Application was not opposed.

4. The record shows that this suit was commenced by way of a Plaint dated 29<sup>th</sup> September, 2017. On 2<sup>nd</sup> November, 2017, the Plaintiffs' Application dated 29<sup>th</sup> September, 2017 for injunctive orders was allowed.

5. After the Application dated 29<sup>th</sup> September, 2017 was allowed, the matter stayed in abeyance until 5<sup>th</sup> April, 2019 when the same came up for the Notice to show cause why the suit should not be dismissed for want of prosecution.

6. The Plaintiffs' advocate has admitted that he was served with the Notice to show cause, and that he arrived in court at 10.30am when the matter had already been called out and dismissed. Indeed, the record shows that the Plaintiffs' counsel arrived in court at 10.30a.m.

7. Considering the efforts that counsel made to travel from Nairobi to Machakos on 5<sup>th</sup> April, 2019, and having addressed the court on the said date, albeit after the matter had been dismissed, I shall exercise my discretion in favour of the Plaintiffs.

8. For those reasons, the Application dated 11<sup>th</sup> April, 2019 is allowed. The Plaintiff to fix this matter for pre-trial directions within 120 days of the date of this Ruling.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2019.**

**O.A. ANGOTE**

**JUDGE**