

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 217 OF 2010

REUBEN KAVITHI KYUNGU (*Suing as the Administrator of the*

Estate of DANIEL KYUNGU MUASYA*).....**PLAINTIFF*

VERSUS

PHILLIP KIVUVA NZIOKA.....DEFENDANT****

RULING

1. In the Notice of Motion dated 2nd July, 2019, the Plaintiff is seeking for the following orders:

a. That the court does set aside the proceedings of 28th September, 2018 and reinstate the Plaintiff's case for hearing on its merits.

b. That upon grant of prayer 1 above, the court do fix a hearing date in court on priority basis.

c. The costs of the Application be in cause.

2. The Application is premised on the grounds that the Plaintiff filed the suit through the firm of Nduva Kitonga & Co. Advocates; that subsequently, the said firm ceased acting for him; that the Plaintiff managed to raise funds and instructed his current advocates and that the said law firm was later informed that the suit was dismissed on 28th September, 2018 for want of prosecution.

3. The Plaintiff deponed that the case was dismissed for want of prosecution without giving him notice; that he was condemned unheard and that he did not prosecute the suit due to lack of money The Defendant did not oppose the Application.

4. The record shows that this suit was filed on 22nd October, 2010 seeking for a declaration that the late Daniel Kyungu Muasya is the owner of land known as Machakos Town Block 1/127. The Defendant entered appearance and filed his Defence on 29th November, 2010.

5. The record further shows that on 28th October, 2010, the Plaintiff's advocate argued his Application dated 15th November, 2014 to cease acting for the Plaintiff. On the said date, the court allowed the Plaintiff's advocate's Application. The record further shows that the Plaintiff was in court on 28th October, 2016 when the Application dated 15th November, 2014 was allowed.

6. The Notice to show cause why the suit should not be dismissed for want of prosecution dated 25th July, 2018 was served on the Plaintiff's former advocate, Nduva Kitonga and Company advocates. It would appear that by the time the said notice was served, the court clerk was not aware that the Plaintiff's advocate had ceased to act for the Plaintiff.

7. To the extent that the Plaintiff was not personally served with the Notice to show cause why the suit should not be dismissed for want of prosecution, he was condemned unheard. Consequently, I allow the Application dated 2nd July, 2019 as prayed.

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

O.A. ANGOTE

JUDGE