



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 101 OF 2014**

**KORNER OCHIENG OYOO.....1<sup>ST</sup> PLAINTIFF**

**HELENA ANYANGO OMBANDA.....2<sup>ND</sup> PLAINTIFF**

*(Both suing as the next of kin and Administrators of the Estate of the late (REMJIUS OYOO ALUODO)).*

**VERSUS**

**MARIA OLOO OLIECH..... 1<sup>ST</sup> DEFENDANT**

**FELIX JUMA OMUDHO.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff/Applicant comes to court vide application dated 9<sup>th</sup> April 2019 seeking orders that the order of the court made on 15/3/2018 by Hon. Justice Kibunja dismissing the suit for want of prosecution be set aside and the Plaintiff's suit be reinstated for hearing.
2. The Plaintiff states in the supporting affidavit that the delay in prosecution of the case was occasioned by the backlog in this court before the Court of Appeal's decision on jurisdiction of Magistrates Court in land matters. He further states that the court file could not be traced for a long time.
3. In the replying affidavit, Felix Juma Omudho states that the Plaintiffs filed the suit in 2014 and the defendant filed appearance on 9/7/2014. Thereafter, no steps were undertaken to fix the suit for hearing. There is no evidence of the missing file.
4. I have considered the application and the replying affidavit and do find that the plaintiff filed suit on 9/4/2014. The defendants filed memorandum of appearance on 29/5/2014 and defence on 9/7/2014.
5. No activity or proceedings took place until the court moved under the provisions of **Order XVII Rule 2** as it then, but now **Order 17 rule 2** of the **Civil Procedure Rules** 2010 to dismiss the suit for want of prosecution. The suit was dismissed for want of prosecution. The applicant seeks to set aside the order for dismissal for want of prosecution.
6. The allegation that the file was missing has not been proved as no single letter to the Deputy Registrar has been given. Moreover, there is no application to reconstruct the file. The argument that failure to prosecute the case was due to backlog does not have merit as it was the duty of the plaintiff to visit the registry and take steps towards the hearing of the suit and not to wait the court to do so.
7. The upshot of the above is that the application has no merit and dismissed with costs. Orders accordingly.

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**DATED AND DELIVERED THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2019.**

**In the presence of:**

**Orieo for Mgoye for Applicant.**

**N/A for the Respondent.**

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**