



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 226 OF 2011**

**DANIEL GICHURU NJUGI T/A GICHURU &  
GICHURU ADVOCATES.....PLAINTIFF**

**VERSUS**

**PAUL NYAGA KANYOI.....1<sup>ST</sup> DEFENDANT**

**HENRY ANGWENY ARAKA.....2<sup>ND</sup> DEFENDANT**

**CYRUS NJOGU MBURU.....3<sup>RD</sup> DEFENDANT**

**MARGARET WAIHERA NJUGI...4<sup>TH</sup> DEFENDANT**

**JOHN NYORO GATHAYO.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Application dated 4<sup>th</sup> May, 2017, the Plaintiff is seeking for the following orders:

- a. That the Ruling and Order made by this court on 17<sup>th</sup> March, 2017 be and is hereby reviewed and/or set aside.**
- b. That the Applications dated 20<sup>th</sup> June, 2016 and 25<sup>th</sup> October, 2016 be allowed as prayed.**
- c. That the costs of this Application be provided for.**

2. The Application is premised on the grounds that there is a mistake apparent on the face of the record and that in the interest of justice, the orders of this court should be reviewed.

3. The Application is supported by the Affidavit of an advocate and a partner in the firm of Tongoi and Co. Advocates who previously had the conduct of the matter on behalf of the Plaintiff.

4. Counsel deponed that in January, 2016, she took leave of absence and left for Australia to pursue further studies; that in May, 2016, she was informed that this suit had been dismissed for want of prosecution and that the Notice to Show Cause why the suit should not be dismissed for want of prosecution was sent to an address which has never belonged to her firm; that the said address is unknown to her; that the firm's address has always been P.O. Box 57229-00200 Nairobi and not 572229-00200 Nairobi and that the said Notice to Show Cause was sent to the wrong address.

5. None of the Defendants responded to the Application.

6. This is one of the many matters that were dismissed by the court on 15<sup>th</sup> July, 2015. On 17<sup>th</sup> March, 2017, this court declined to reinstate the suit.

7. In the said Ruling, the court held that the advocate who was then on record for the Plaintiff had not filed an Affidavit denying service of the Notice to Show Cause.

8. Taking a cue from the said Ruling, the Plaintiff has filed an Application seeking to review the Ruling of 17<sup>th</sup> March, 2017 on the ground that there is an error on the face of the record and “*on account of sufficient reasons shown in the Affidavit.*”

9. The Plaintiff’s former advocate has now sworn an Affidavit in which she has deponed that her law firm never received the alleged Notice to Show Cause; that the firm’s postal address has always been P.O. Box 57229-00200 Nairobi and that she has noticed that the Notice to Show Cause was sent to P.O. Box 572229-00100 Nairobi.

10. I have perused the copy of the Notice to Show Cause that is in the court file. The said copy clearly shows the address of Tongoi and Co. Advocates to be “*P.O. Box 57229-00200 Nairobi*” and not 572229-00200 Nairobi as alleged by the Plaintiff’s former advocate.

11. The fact that in the Ruling of 17<sup>th</sup> March, 2017, the court indicated that the address of the firm of Tongoi & Co. Advocates is P.O. Box 572229-00200, which is a typographical error, does not change the fact that the record shows that the Notice to Show Cause was sent to P.O. Box 57229-00200, Nairobi, which is the correct address.

12. In the circumstances, there is no apparent error on the face of the record or “*sufficient reason*” to enable this court review the Ruling of 17<sup>th</sup> March, 2017.

13. In the circumstances, I dismiss the Application dated 4<sup>th</sup> May, 2017 with no order as to costs.

14. For avoidance of doubt, this suit stands dismissed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26<sup>TH</sup> DAY OF JANUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**