

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 187 OF 2007

EVEREST LIMITED.....PLAINTIFF

VERSUS

CATHERINE WAMBUI KURIA.....DEFENDANT

RULING

The Plaintiff filed the application dated 18/7/2017 seeking to set aside the order made by this court on 17/5/2017 dismissing its suit and seeking to reinstate the suit. The application is supported by the affidavit sworn by the Plaintiff's advocate in which she depones that after the court granted the Plaintiff leave to amend its plaint on 3/3/2017, the court file went missing. It is stated that the Plaintiff learnt about the hearing date on 17/5/2017 when it was served with the hearing notice. The Advocate claims to have walked into court on the date fixed for hearing after the Defendant's advocate had applied to have the suit struck out for want of prosecution.

The Defendant's advocate swore the replying affidavit in opposition to the application for reinstatement of the suit. She states that it is evident the Plaintiff failed to comply with the court ruling of 3/3/2017 by paying the court fees for the Amended Plaint. She also maintains that the Plaintiff is not keen on progressing this suit; the suit has previously been dismissed and reinstated on previously on 28/5/2015 and 25/6/2016. The Defendant's advocate also avers that on 6/11/2012 the Plaintiff was directed by Lady Justice Nyamweya to prosecute the suit within 90 days but the Plaintiff failed to do so. The Defendant believes the Plaintiff is not interested in the speedy conclusion of this dispute.

The Plaintiff's advocate did not attend court on 3/3/2017 when the ruling on its application to amend the plaint was delivered. The court observed that this was an old matter and fixed it for hearing on 17/5/2017 during service week and directed the Defendant advocate to serve a hearing notice on Plaintiff's advocate. The Plaintiffs were served on 3/5/2017. They received the notice under protest stating that counsel would be attending ELRC Petition 106 of 2017 on that day.

The Plaintiff's advocate admits in his affidavit that he learnt on 17/5/2017 that the suit had been dismissed. No explanation is given for the delay of over 2 months in filing the application for reinstatement. This is an old suit, filed over 10 years ago. The court notes that the Plaintiff never filed and served its Amended Plaint yet it was directed to pay the requisite court fees on 3/3/2017.

The court has considered the application, the Replying Affidavit together with the submissions of counsels.

The court is inclined to agree with the Defendant that the Plaintiff is not keen on prosecuting this old matter; which has previously been dismissed for want of prosecution and reinstated. The court declines to grant the orders sought in the application dated 18/7/2017. It is dismissed with costs to the Defendant.

Dated and delivered at Nairobi this 25th day of January 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Ochieng for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant