



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 149 OF 2012

SHAYONA TIMBER LIMITED.....APPLICANT

VERSUS

KENYA NATIONAL HIGHWAY AUTHORITY.....RESPONDENT

RULING

(Application to reinstate suit; suit dismissed for non-attendance of the plaintiff; application allowed)

1. The application before me is that dated 30 January 2018 filed by the plaintiff. It is an application brought pursuant to the provisions of Order 12 Rule 7 of the Civil Procedure Rules, and Section 3 and 3A of the Civil Procedure Act. The application basically seeks the reinstatement of this suit, which was dismissed on 29 January 2018, owing to the non-attendance of the plaintiff.

2. I have gone through the record. The case was indeed fixed for hearing on 29 January 2018. On the said date, there was no appearance on the part of the plaintiff or his counsel. I therefore proceeded to dismiss the case as provided for pursuant to Order 12 Rule 3(1) which provides as follows :-

If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.

3. The court was therefore within its powers to dismiss the case for the non-attendance of the plaintiff.

4. Through this application, the plaintiff has applied to have its suit reinstated. It is averred that counsel for the plaintiff was in court on the day, but was called to attend to another matter, and when he came back, he found this suit had been called out and dismissed. It is also averred that the plaintiff's witness was within town. The supporting affidavit is sworn by Mr. Lawrence Macharia Karanja, learned counsel for the plaintiff, who has mentioned that he was in court on the day, and indeed dealt with another matter that was due for mention. He has stated that he left to attend to another matter before a High Court judge, and had therefore stepped out, when the case was called out and dismissed. He has deposed that he met the plaintiff's witness in the morning and he informed him that he would call him once the matter was confirmed for hearing.

5. I have considered the application which is premised under Order 12 Rule 7 which provides as follows :-

Where under this Order judgment has been entered or the suit has been dismissed, the court, on

application, may set aside or vary the judgment or order upon such terms as may be just.

6. The court therefore has the discretion to reinstate a suit that has been dismissed for non-attendance. As in any other discretion, the same needs to be exercised judiciously. In my view, in applications such as these, good reason needs to be given as to why the party was not present at the hearing. I have looked at the reasons given for non-attendance. I may excuse the absence of Mr. Karanja in court when the case was called out, which he has well explained, but it should be recalled that the suit was dismissed, not because Mr. Karanja was absent, but because it was the plaintiff who was absent. I have been informed that the plaintiff was to attend on a call to be made by counsel. That was a risky venture by counsel, for the court can indeed direct a matter to proceed on the spot, once it has been reached. Litigants need to be ready at any time of the day when they have a date for hearing, for it may not be known when they will be reached. It is not for the court to wait for litigants to appear when, and as they wish. If that were the case, then the administration of justice will be severely compromised.

7. Be that as it may, so that the plaintiff can have its day in court, I will allow the application. No response was filed to oppose the motion and neither did counsel for the respondent appear during its hearing. I therefore make no orders as to costs.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 28th day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In the presence of:-

Ms. Amulabu holding brief for Mr. Karanja for the applicant.

No appearance for the respondent

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU