



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 60 OF 2010

MBWELE MUOKI.....1ST PLAINTIFF

DENNIS MUOKI.....2ND PLAINTIFF

VERSUS

JUSTUS MUTIE KIOKO.....DEFENDANT

RULING

1. In his Application dated 26th April, 2017, the Defendant is seeking for the following orders:

a. That the orders of 9th March, 2017 and of 24th March, 2017 dismissing the Applicant's Notice of Motion Applications dated 7th March, 2017 and 9th March, 2017 respectively be set aside and/or varied.

b. That the Defendant/Applicant's Application dated 7th March, 2017 and 9th March, 2017 be reinstated for hearing and be certified urgent.

c. That the costs of this Application be in the cause.

2. The Application is premised on the grounds that the dismissal of the Applications dated 9th March, 2017 and 24th March, 2017 was due to the fact that the Defendant was not well versed with the process in respect of Applications under certificate of urgency.

3. The Defendant has deponed that his failure to attend court when the matter was listed was inadvertent and that the orders dismissing the Applications should be set aside.

4. In response, the Plaintiff deponed that the Defendant did not attend court on 26th January, 2017 when his case was closed; that the Defendant's Application seeking to set aside the orders of the court was fixed for hearing on 9th March, 2017 when the Defendant did not turn up and the same was dismissed and that when the Defendant filed another Application to reinstate the dismissed Application, the court dismissed it.

5. The Plaintiff deponed that the current Application is *res-judicata* and that the same should be dismissed with costs.

6. The Defendant/Applicant's advocate submitted that the Applicant has over the years being interested in defending this matter; that under Article 50(1) of the Constitution, every person ought to be accorded a fair hearing and that the Defendant made his Application to reinstate the dismissed Application without undue delay.

7. The Defendant's counsel relied on several authorities which I have considered.

8. The Plaintiffs'/Respondents' counsel submitted that the court cannot be called upon to sit on its own appeal and that the current Application is frivolous.

9. This is the second attempt the Defendant is making to have the Application dated 7th March, 2017 which was dismissed on 9th March reinstated.

10. Indeed, in the Application dated 9th March, 2017, the Defendant sought for the following orders:

a. That the order of this Honourable Court made on 9th March, 2017 dismissing the Application dated 7th March, 2017 be set aside.

b. That the order setting the matter down for Judgment of 9th June, 2017 be set aside.

11. The said Application was heard by this court inter-partes and vide a Ruling dated 24th March, 2017, the court dismissed the Application on the ground that no good reasons had been given as to why the Defendant was not in court on 9th March, 2017.

12. Similar orders are now being sought in the current Application, and to that extent, the Application is not only *res-judicata*, but an abuse of the court process.

13. If the Defendant is dissatisfied with the Ruling of 24th March, 2017, he should file an appeal against the said decision.

14. For those reasons, I dismiss with costs the Application dated 26th April, 2017.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE