

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 75 OF 2009

NANCY WAIRIMU NJAU.....1ST PLAINTIFF

GEOFFREY NJAU MUNGAI.....2ND PLAINTIFF

VERSUS

JOSEPH OKEMWA ONTWEKA.....1ST DEFENDANT

DICKSON NDECHU GATONGO2ND DEFENDANT

MRS. MICHAEL NJUGUNA.....3RD DEFENDANT

RULING

1. In the Application dated 22nd March, 2017, the Plaintiffs are praying for the setting aside of the orders of this court of 21st February, 2017 dismissing the suit for want of attendance.
2. The Application is premised on the grounds that the Plaintiffs' advocate was in court on 21st March, 2017 for the hearing of the suit; that the matter was not on the daily cause list of 21st March, 2017 and that instead the matter was listed for hearing on 21st February, 2017.
3. The Plaintiffs' advocate deponed that the dismissal of the matter was not due to his fault but that of the court officers.
4. The Application was not opposed by the Defendants.
5. The record shows that on 18th January, 2017, this matter was fixed for hearing for 21st March, 2017. The hearing date was taken by the Plaintiffs' advocate who served on the Defendants a hearing notice. The hearing notice clearly shows that the matter was to be heard on 21st March, 2017 and the same was received by the Defendants' advocate on 18th January, 2017.
6. The Plaintiffs' advocate has deponed that this matter was listed for hearing on 21st February, 2017 instead of 21st March, 2017. However, the Plaintiffs' advocate has not annexed on his Affidavit the cause list for both dates to enable the court ascertain if indeed the matter was listed for hearing on 21st February, 2017 and not 21st March, 2017.
7. In any event, the record clearly shows that the matter was before me on 21st March, 2017 and not on 21st February, 2017 as alleged by the Plaintiffs' advocate. On the said date, the court dismissed the matter for non-attendance by the Plaintiffs and their advocate.
8. The allegation that the matter was dismissed on 21st February, 2017 is therefore not supported by any evidence.
9. In the circumstances, I find that no good reason has been given to warrant the setting aside of the orders of 21st March, 2017. The Application dated 22nd March, 2017 is therefore dismissed with costs.

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

O.A. ANGOTE

JUDGE