



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 330 OF 2017

FORMERLY ELC KISII NO. 15 OF 2017

JACKSON SHINTU KIMUMA.....PLAINTIFF

-VERSUS-

CHAIRMAN BOARD OF MANAGEMENT.....1ST DEFENDANT

OLDONYOROK SECONDARY SCHOOL....2ND DEFENDANT

PAUL RUTO (CHIEF).....3RD DEFENDANT

LAND RREGISTRAR TRANSMARA.....4TH DEFENDANT

HON. ATTORNEY GENERAL.....5TH DEFENDANT

RULING

This Application before me is for determination of the Plaintiff's Notice of Motion dated 26th September, 2017 brought under order 12(7) of the Civil Procedure Rules and section 1A 1B of the Civil procedure Act seeking the setting aside of an order made by this court on 18th September, 2017 dismissing the suit and reinstating the same.

The Application is based on the grounds that the date the suit was fixed was for hearing, the same was not convenient as the plaintiff advocate was engaged in Nyamira law courts and he listed 8 matters that he was engaged in. He further stated that the hearing notice was received under protest and that his mistake not to attend court on the said date should not be visited upon the Plaintiff.

The Respondent opposed the said Application and filed a Replying Affidavit stating that the Plaintiff's advocate chose to stay away from court despite service of a hearing Notice and that the Plaintiff has failed to prosecute the case since filing the same.

I have read the Application before me and the Replying Affidavit filed in opposition to the same and the issue for determination before me is whether the applicant herein deserves the discretion of the court in reinstating the suit.

The Applicant's suit was dismissed on the 18th September, 2017 when counsel failed to appear. However, from the record it is evident that the hearing date was taken ex parte in the absence of the Plaintiff's advocate and since he states that he received the said notice under protest as he was engaged elsewhere I should not visit the mistake on the plaintiff.

Secondly, the plaintiff was without any inordinate delay applied for the setting aside of the order for dismissal which in my mind shows his desire to have the matter heard.

Lastly it shall serve the interest of justice if the suit herein is heard on merit.

The upshot of the above is that I will allow the Plaintiff's Application dated 26th September, 2017 and I set aside my order of dismissal of the suit dated 18th September, 2017 and that the dismissed suit is reinstated.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 7TH day of FEBRUARY, 2018

Mohammed Noor Kullow

Judge

7/2/18

In the presence of:

O.M. Otieno for 1st and 2nd defendant

N/A for the plaintiff

Mohamed Noor Kullow

Judge

7/2/18