



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 131 OF 2004

ALFRED JUMA WANAMBISI.....PLAINTIFF

VERSUS

ALICE NALIKA SIMIYU.....DEFENDANT

R U L I N G

1. The applicant has come before this court and vide an application dated 30/11/2017, he has sought an order setting aside the orders made on 15/2/2016 dismissing the plaintiff's suit to pave the way for the hearing of the suit on its merits.

2. He also seeks that upon such reinstatement, leave be granted to enjoin Trans-Nzoia Investment Co. Ltd and its existing Directors as defendants.

3. As seen from the grounds at the foot of the application and the supporting affidavit of the plaintiff sworn on 30/11/2017, the grounds it is based on are that Notice of Dismissal was not served upon the plaintiff's current advocates; that notice was purportedly served upon his former advocates who in any event had ceased acting for him at the time of service and that therefore failure to attend court was not intentional.

4. The application is opposed. The affidavit of Peter Kiarie Ndarwa, Advocate is filed in opposition thereto. It emphasizes that the matter was last in court before the dismissal on 15/5/2014 and that from that date up to 15/2/2016, a period of almost 2 years no step had been taken by the plaintiff to prosecute his case and the suit was therefore dismissed at the instance of the court.

5. Service of process is a very crucial element in the justice system. The merits or demerits of any litigants suit notwithstanding, what matters in the end is whether that litigant was served with process to enable him argue his position in court. Justice cannot be said to have been done if judgment is entered against a party yet service was not effect, or service was effected on the wrong party, or that there was inadequate notice to any litigant to present his case before court. The provisions of the civil procedure generally respect not just service but adequate service.

6. I have considered the contents of the supporting affidavit. They show that as at the time of service of notice upon Etiany Oroni & Co. Advocates and that is after 22/11/2016, the firm of Kraido & Co. Advocates had already filed their Notice of Change of Advocates dated 29/4/2014. It is therefore the correct position that there was no proper service, service having been effected upon the wrong firm of Advocates.

7. Concerning prayer No. (e), this court finds it too presumptuous. The reason for this observation is that the suit had been listed for the parties to show cause why the suit should not be dismissed for want of prosecution and that issue has yet to be addressed. Though the application partially has merit, this court can only go so far as setting aside the order of dismissal and all consequential orders and no more. The prayer for joinder of Trans-Nzoia Investment Co. Ltd can only be suspended till a determination has been made as to whether the suit will be dismissed or not. It is dependent on that issue.

8. I therefore issue the follows orders:-

(1) That the application dated 30/11/2017 succeeds partially.

(2) That prayer No. (c) granted.

(3) That prayer No. (c) is granted only to the extent that the suit is hereby reinstated but it shall be listed for the plaintiff to satisfy the Notice to Show Cause dated 22/1/2016 now that he is aware of it.

(4) Prayer No. (c) shall be argued and considered by the court contingent upon the determination as to whether the suit

should be dismissed upon the hearing of the Notice to Show Cause.

(5) The costs of the application shall be borne by the plaintiff.

Dated, signed and delivered at Kitale on this 23rd day of 2018.

MWANGI NJOROGE

JUDGE

23/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Kraido for Plaintiff/Applicant

N/A for Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

23/4/2018