



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO.314 OF 2009**

**JOSHUA MUTHIANI NZIVE.....PLAINTIFF**

**VERSUS**

**NICHOLAS MULWA MBUVI.....1<sup>ST</sup> DEFENDANT**

**BONIFACE MAKUMI NDAMBUKI.....2<sup>ND</sup> DEFENDANT**

**ELIZABETH KAVELE MUTUA.....3<sup>RD</sup> DEFENDANT**

**WAMBUA KAVETE.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Application dated 5<sup>th</sup> April, 2017, the Plaintiff is seeking for an order setting aside the orders of the court of 27<sup>th</sup> March, 2017. The Application is supported by the Affidavit of the Plaintiff's advocate who deponed that when they attempted to fix the matter for hearing, they were told that the file was to be transferred to Makueni; that the Plaintiff is willing and interested to have the case heard and determined and that her failure to attend court was not deliberate because she was held up in Makueni High Court on the day the matter came up for hearing.
2. The Application was not opposed by the Defendants.
3. The record shows that the matter came up for the Notice to Show Cause why the same should not be dismissed for want of prosecution on 27<sup>th</sup> March, 2017. On that day, neither the Plaintiff nor his advocates were in court. The matter was therefore dismissed for want of prosecution.
4. Although the Plaintiff's advocate has deponed that she was in Makueni High Court on the said date, and that she sent her court clerk to look for an advocate to hold her brief, she has not given the particulars of the matter that she was appearing in Makueni High Court.
5. In any event, no Affidavit was filed by the Plaintiff to show cause as to why the matter should not be dismissed. Considering that this suit has never been fixed for hearing since it was filed in the year 2009, and in the absence of convincing reasons by the Plaintiff's advocate that her failure to attend court on 27<sup>th</sup> March, 2017 was not deliberate, I decline to allow the Application dated 5<sup>th</sup> April, 2017.
6. Consequently, I dismiss the Application dated 5<sup>th</sup> April, 2017 with no order as to costs. For avoidance of doubt, the suit stands dismissed as ordered by the court on 27<sup>th</sup> March, 2017.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20<sup>TH</sup> DAY OF APRIL, 2018.**

**O.A. ANGOTE**

**JUDGE**