



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 16 OF 2011**

**NANCY KAMENE MAINGI.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**ZILPAH MONYANGI ACHOKI.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**TERESIAH K. MUTUKU.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**PAULINE M. PETER.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ELIZABETH K. MUTHA .....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. In the Application dated 23<sup>rd</sup> October, 2017, the Plaintiffs are seeking for the following orders:

*a. That the firm of Aunga Omwenga & Company advocates be allowed to come on record for the Plaintiffs/Applicants in replacement of Kamolo & Associates Advocates.*

*b. That this Honourable Court be pleased to set aside its order of dismissal of the Plaintiffs' suit issued on the 16<sup>th</sup> June, 2017 and reinstate the same for hearing and determination on merit.*

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

2. In support of the Application, the 1<sup>st</sup> Plaintiff has deponed that the suit was dismissed by the court for want of prosecution; that the dismissal Notice of 24<sup>th</sup> April, 2017 was never served on the firm of Kamolo & Associates advocates and that the dismissal date was varied from 9<sup>th</sup> June, 2017 to 16<sup>th</sup> June, 2017 by the Deputy Registrar but the firm of Kamolo was not aware of the change in dates.

3. According to the 1<sup>st</sup> Plaintiff, the suit remained unprosecuted due to the restrained relationship between the Plaintiffs and their advocates and that he was only aware of the dismissal order when his present advocate perused the court file.

4. The Defendants filed their Grounds of Opposition in which they averred that the Plaintiffs have not discharged their burden of proof by even remotely attempting to explain their non-prosecution of the matter since 11<sup>th</sup> November, 2013 when the matter was last in court.

5. The parties relied on their pleadings.

6. The record shows that on 16<sup>th</sup> June, 2017, this matter was dismissed for want of prosecution by the court pursuant to the provisions of Order 17 Rule 2(1) of the Civil Procedure Rules. The record further shows that the Notice of Dismissal was addressed to the firm of Kamolo & Associates Advocates.

7. Although the 1<sup>st</sup> Plaintiff has deponed that the firm of Kamolo & Associates Advocates was not served with the Notice of Dismissal, an advocate from the said firm has not filed an Affidavit to say so. Indeed, it is only an advocate from the firm of Kamolo & Associates Advocates who can depone to that fact and not the Plaintiffs.

8. In any event, the Plaintiffs' explanation that the suit was not fixed for hearing for more than four (4) years because of their restrained

relationship with the previous advocates confirms that they had lost interest in prosecuting the suit for the four (4) years the matter remained dormant. That is why they never instructed another advocate to take over the matter.

9. Considering that no good reason has been given as to why the suit was never prosecuted expeditiously, and in the absence of any evidence or deposition by an advocate from the firm of Kamolo & Associates Advocates that they were not aware of the Notice of Dismissal dated 24<sup>th</sup> April, 2017, I find the Application dated 23<sup>rd</sup> October, 2017 to be unmeritorious.

10. I therefore dismiss the Application dated 23<sup>rd</sup> October, 2017 with no order as to costs. This suit stands dismissed and should be filed away.

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

**O.A. ANGOTE**

**JUDGE**