



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 491 OF 2017**

**FORMERLY KISII ELC NO. 1236 OF 2017**

**LEMISO OLE MURRI.....PLAINTIFF**

**-VERSUS-**

**ANDREW KIRIONKI.....1<sup>ST</sup> DEFENDANT**

**MOSES KIRIONKI.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Application before me is the Notice of Motion dated 13<sup>th</sup> December, 2017 seeking interalia for orders to reinstate the present suit and the same be heard on merit.

The Application is based on the grounds that failure to attend court on the date of hearing was not deliberate and that the Applicant was not served with a hearing notice to attend court and further that the Application was brought without undue delay.

The Application was supported by the Affidavit of the Applicant in which he depones that he is the son of the plaintiff who is elderly and that the hearing notice to the suit was served upon his brother who is a herdsman. He further states that when he contacted their Advocate on record he ceased acting since he could not get instructions from them and their failure to attend court was occasioned by the receipt of the hearing notice later. He contends that it will be just and fair to have the matter heard afresh.

The Application was opposed by the Respondents who filed grounds of opposition to the same. It is the Respondents contention that the Application is premature and misconceived and that the Applicant has not laid before court sufficient basis for the grant of the court to exercise its discretion. He further contends that the Affidavit in support of the application is defective to wit that the same has not been attested to at the jurat.

I have read the application before me. The application is one that seeks to benefit from the discretion of the court to set aside its judgment. Form the applicant's affidavit he states that their only inability to be in court for the hearing of the matter is because the said notice was served on a herdsman who is his brother.

From the record and the Application I find that the inability of the applicant to attend court was not deliberate nor was the same meant to delay the hearing of the matter. From the pleading the plaintiff is elderly and being of his age could not comprehend as his son who had contact with the lawyer died and thus this may have contributed to the breakdown of communication between the advocate and client.

In view of the above and in the interest of justice I will allow the application dated 13<sup>th</sup> December, 2017 with no orders as to costs.

Further since the suit falls within the jurisdiction of the Magistrate's court I order that the suit herein be transferred to Kilgoris Principal Magistrate's Court for hearing and determination.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 20<sup>th</sup> day of APRIL, 2018**

**Mohammed Noor Kullow**

**Judge**

**20/4/2018**

In the presence of:

CA:Chuma

Mr Kamwaro holding brief for Bosire for the plaintiff

Langat holding brief for Oguto for the defendants

**Mohammed Noor Kullow**

**Judge**

**20/4/2018**