



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**MISC. APPLICATION NO. 17 OF 2015**

**IN THE MATTER OF THE JUDICATURE ACT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR CONTEMPT OF COURT PROCEEDINGS**

**BETWEEN**

**HENRY KOSGEY.....1<sup>ST</sup> APPLICANT**

**ESTHER JEPKEMBOI KIPLAGAT.....2<sup>ND</sup> APPLICANT**

**EDWIN KIPLAGAT.....3<sup>RD</sup> APPLICANT**

**ISAAC KIPROP KIPLAGAT.....4<sup>TH</sup> APPLICANT**

**JONAH KIPTOO BETT.....5<sup>TH</sup> APPLICANT**

**ISAYA KUNYAMA.....6<sup>TH</sup> APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF UASIN GISHU.....RESPONDENT**

**RULING**

The applicant seeks orders that the suit be reinstated unconditionally and be heard on merit. The application is based on grounds that Mr. Assesso, Advocate for the respondent misled the court that the application had not been served upon him whereas the same had been served and was coming for highlighting. Parties have filed written submission. Mr. Nyamweya states that when the matter was dismissed he was engaged in court Number 2 and that a party should not be punished for the mistakes of counsel.

Mr. Nyamweya states that this matter was fixed for highlighting of submissions on 27.7.2017. That on the 27.7.2017, he was in court and temporary step out to court, E & L Court 2 to ask someone to hold brief there and upon return at the court, this cause had been called out and dismissed. That when he requested for the file and perused it, it indicated that Mr. Assesso Advocate learned counsel for the respondent had told the court that he had not been served with the application which was not true as the record shall bear him witness that the application had been served and responded and was coming up for submissions. Mr. Assesso Advocate having told the court the application was not served, the court proceeded to dismiss the case for want of prosecution as opposed to non-attendance. According to Mr. Nyamweya, if Mr. Assesso had told the court that the application was coming up for highlighting of submission, the honourable court would have made different orders like allocating time for the highlighting.

He arrived at the court room when the matter had been called out and dismissed and this was caused by the fact that he had stepped out temporary to instruct an Advocate in E & L Court 2 to hold his brief when he returned to find that this matter had been called out and dismissed. The dismissal of this matter without the applicants being heard will seriously prejudice them. That the applicants would have been condemned unheard and for reasons not of their own making. He believes that it will be fair and for the sake of the interest of justice that the applicants be given a hearing on this matter which they brought seeking justice from the court against the respondents.

The defendant filed grounds of opposition whose import is that the application is fatally defective and that the same is abuse of court process and that the applicant is indolent and guilty of laches in bringing the application nine (9) weeks after the dismissal.

I have considered the application and the grounds of opposition, rival submissions and do find that the cause of dismissal of the application was the non-attendance by Mr. Nyamweya when the matter came for hearing of the application dated 10.8.2015. Mr. Nyamweya took more than 2 months to make an application for the reinstatement of the application a period I do find to be inordinate delay. The matter was commenced under certificate of urgency on 11.6.2015. The applicant should have moved the court immediately the application was dismissed. The date had been taken by Mr. Nyamweya and therefore, there is no excuse for non-attendance. Mr. Nyamweya has not disclosed to this court which matter he went to attend to in Court no 2 and therefore I do find that there is no sufficient explanation as to why he did not attend court when the application was scheduled for hearing. The upshot of the above is that the application is dismissed with costs.

**Dated and delivered at Eldoret this 19<sup>th</sup> day of April, 2018.**

**A. OMBWAYO**

**JUDGE**