



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MURANG'A

E.L.C NO. 468 OF 2017

LAWRENCE GACHAU KIHU - **1ST PLAINTIFF**
ESTHER WAIRIMU KAGIRI - **2ND PLAINTIFF**
HANNAH MWIHAKI KAMAU - **3RD PLAINITFF**
EUNICE MWIHAKI KAMAU - **4TH PLAINTIFF**
ROSEMARY WAIGWE WAMWEA - **5TH PLAINITFF**

VS

MARY WANGUI MAINA (SUED ON BEHALF OF

MAINA KIHU (Deceased) - DEFENDANT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion through certificate of urgency dated 26/06/2017 together with a plaint dated the same day. The application was settled by the consent of the parties on 18/10/2017. Thereafter the Plaintiff filed an amended plaint dated 27/12/2017.

2. When the matter came up for hearing on the 11/04/2018 both parties were absent and the Court made orders dismissing the case for non attendance/want of prosecution. Counsel for the Plaintiff later appeared in Court the same day and filed an application under certificate of urgency to reinstate the suit seeking the following orders:-

- a. That the application herein be certified urgent but be heard ex-parte at first instant.
- b. That pending the hearing and determination of this application inter-parties the Honourable Court be pleased to restrain the Defendant/respondent by herself her agents, servants, employees, and/or others howsoever from interference with the parcels of land L.R. No. 206.2/Kanderendu/63 measuring 13.7 acres in regard to disposal sale or waste (with exception of normal use for cultivation).
- c. That the order of the Honourable Court made on the 11/04/2018 dismissing ELC suit No.468 of 2017 be reviewed, varied and/or set aside.

d. That the suit be reinstated for hearing.

e. That the costs of this application be in the cause.

7. The application was premised on the grounds that the order of dismissal made on 11/04/2018 was made through no fault or wrong doing on the part of the Applicant. That the Applicant and his Advocate travelled from Nakuru and Kikuyu respectively that morning and was held up by a heavy traffic jam and arrived when the matter had already been called out and dismissed. That the Applicant is keen on prosecuting the suit, the same is merited and the delay in reaching Court on time for the hearing of the case is regrettable. That it is in the interests of justice for the order of dismissal to be set aside so that the matter may be heard on its own merits.

8. When the application came up for hearing on 16/04/2018 the Defendant was absent in Court. The Learned Counsel for the Plaintiff/Applicant submitted that the Defendant had been served but had failed to file any reply to the application dated 11/04/2018 therefore the application was unopposed

9. The Court has considered the applications the oral submissions made by the Learned Counsel for the Applicant. It is not in dispute that the respondents were served with the application as seen in the Affidavit of Service dated 16/4/18 and filed in Court on the same date. It is to be noted that the application is not opposed. The application was filed the same day hence timeously. Guided by the overriding objectives stated in Section 1A and 1B of the Civil Procedure Act, the Court is satisfied of the reasons advanced by the Plaintiffs and in the interest of justice exercise discretion to set aside the orders granted on 28/2/18 on condition that the suit be set down for hearing within the next 30 days in default the case shall stand dismissed.

10. Costs shall be in the cause.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF APRIL 2018

J G KEMEI

JUDGE