



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 107 OF 2017

MARGARET NABUIN LOMATONG.....PLAINTIFF

VERSUS

SYLVIA ABEI KOSIAE.....1ST DEFENDANT/RESPONDENT

JACKSON EKIRU KOSIAE.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. The application dated 26/3/2018 seeks an order setting aside the order of dismissal of this suit for want of prosecution issued on 21/3/2018. It is noteworthy that the application proceeded ex-parte. The reason why that was allowed by this court is that the court became aware that the order of dismissal was made after the formal proof hearing held on 11/12/2017 on which date there was no appearance on behalf of the defendants. However it is on the record that on 21/3/2018 when the matter came up for further formal proof hearing, Mr. Wafula holding brief for Ms. Nasike for the defendants, prayed that the matter be stood over generally on account of the absence of plaintiff's counsel, a thing this court was not wont to do as it is the current practice that suits should always be active. This court promptly dispatched the suit into the category of dismissed cases for the reason of non-prosecution.

2. It has since been also brought to the attention of the court that the memorandum of appearance and the statement of defence of the 1st and 2nd defendants were filed irregularly on 20/3/2018 and are improperly on the record. The counsel for the plaintiff has also adequately explained why the plaintiff was not in court on the day of dismissal of the suit. Counsel had the erroneous belief, based on information received from a source she would otherwise believe to be truthful, that the court would not sit on that day, and she had informed the plaintiff. Nevertheless by some quirk of circumstances, though counsel was in court on that day on other matters, this matter escaped her attention.

3. Sufficient grounds have been laid for the order of setting aside the dismissal of this suit, and the plaintiff's application dated 26/3/2018 is granted in terms of prayers Nos. (b) and (c). Costs of this application shall be in the cause.

Dated, signed and delivered at Kitale on this 13th day of April, 2018.

MWANGI NJOROGE

JUDGE

13/4/2018

Coram:

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Mufutu holding brief for Oduor for Applicant

N/A for the Defendants

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

13/4/2018