



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 59 OF 2005

PHYLLIS KAMINCIA M'MIRITI 1ST PLAINTIFF

REBECCA MWITI MUNGORWE 2ND PLAINTIFF

JULIA NCHENGE..... 3RD PLAINTIFF

RUTH NKUENE 4TH PLAINTIFF

VERSUS

M'RUNGENTO MBOGORI 1ST DEFENDANT

DAVID SILAS SAFARI 2ND DEFENDANT

JOSEPH KITHINJI KANGI 3RD DEFENDANT

RULING

1. The applicants (vide their application dated 23.1.2018) are seeking orders of reinstatement of the suit, which suit was dismissed on 13.7.2015.
2. Applicants claim that the matter was not in the cause list of 13.7.2015, that, that the court file also went missing and that 2nd defendant died.
3. Applicants have not availed a cause list of 13.7.2015 and hence the claim that the matter was not cause listed is neither here nor there.
4. There is also no evidence of the file having gone missing. Annexure CRMM "6" is a letter inviting defence advocate to participate in fixing of the hearing date, and is dated 5.5.2017. It is not a document to show that the court file had gone missing. There is no plausible explanation as to why there was inordinate delay in the prosecution of this matter.
5. The applicants allege that advocate for 2nd defendant (deceased) failed to take any action for substitution hence delaying the matter. However onus was not upon deceased's advocate to cause substitution. This is the plaintiffs' case and it was their responsibility to ensure that there was substitution.
6. Despite the foregoing findings, and noting that land is a very emotive matter, I will give the applicants a final chance to prosecute the case. I hence grant the following orders;
 - i. The orders of 13.7.2015 dismissing the suit are hereby set aside. The suit is hereby reinstated on condition that this suit is to be set down for hearing within a period of 6 months, failure to which the suit will still stand as dismissed.
 - ii. Applicants are to bear the costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 9th MAY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Miss Munga for plaintiff present

A.G Kiongo for defendant absent

HON. LUCY. N. MBUGUA

ELC JUDGE