

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 51 OF 2012

FRANCIS EKESA.....PLAINTIFF

VERSUS

ANDREW MBAYAKI

MAMULUNDU SIGANGA.....DEFENDANTS

RULING

This application is dated 21st March 2018 and seeks the following orders;

1. That leave be granted to the plaintiff to act in person and terminate the services of M/s. Ndegwa Waweru and Co. Advocates forthwith.
2. That upon prayer 1 being granted the notice of intention to act in person herein be deemed as duly filed.
3. That the orders of 15/11/2017 be reviewed.
4. That this suit be reinstated for hearing.
5. That costs be in the cause.

The applicant submitted that, on or about the 29/11/2012 he instructed the firm of M/s. Ndegwa Waweru & Co. Advocates to file this suit on his behalf and he fully paid for the service as agreed. That he on several occasions visited the offices of the aforesaid advocate with the purpose of having his case prosecuted and he was surprised to learn that his case had been dismissed for want of prosecution. That he was never served with any notice for dismissal of this suit at all. That his advocate informed him that this matter was still pending hearing and even informed him to attend court on several occasions which he did but to his surprise he never attended court as promised. That if at all the mistake was with his advocate on record then counsel's mistake cannot be vested on him as he is a poor litigant. That he is very much interested in this suit and to have it concluded on merit. That the defendants shall not in any manner be prejudiced in the circumstance. That it is necessary that the orders of 15/11/2017 be reviewed since the mistake herein was on the part of the counsel for the plaintiff. That the reliefs sought shall meet ends of justice.

This court has considered the application. The respondent was served but failed to attend court and the matter proceeded ex parte. The application is grounded on the affidavit of Francis Ekesa. That the plaintiff is interested in this case and to have it determined on merit. The plaintiff has lost faith in his advocates on record. The plaintiff's advocates never informed the plaintiff of any notice for dismissal of this suit. The plaintiff has on several occasions visited his advocates on record with a view to prosecute his case. Counsel's mistake cannot be vested on a poor litigant. The defendants shall not be prejudiced. The reliefs sought meet ends of justice.

This court has perused the court file and indeed a similar application dated 27th September 2016 was heard on merit and ruling delivered on 15th November 2017 dismissing the same for want of prosecution. No new evidence has been provided in the instant application and the applicant has now become a vexatious litigant. This application is an abuse of the courts system and a waste of its time. I wish to reiterate the reasons given in that application 27th September 2016 and I find this application has no merit and is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH DAY OF JUNE 2018.

N.A. MATHEKA

JUDGE