

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 138 OF 2001

DAVID MUSYOKA MUTAVI.....PLAINTIFF

VERSUS

JOHN WAMBUA MUTUNE1ST DEFENDANT

THADDEUS MUTUNE NZIVO.....2ND DEFENDANT

RULING

1. The Application before me is the one dated 30th November, 2017 in which the Plaintiff is seeking for the reinstatement of the suit which was dismissed by this court on 30th November, 2017.
2. The Application is premised on the grounds that the court file has always been missing; that the Plaintiff's advocate was not aware of the Notice to show cause why the suit should not be dismissed for want of prosecution and that the said advocate was not served with the Notice to show cause.
3. According to the Plaintiff's advocate, by the time the Notice to show cause was received by him, the date to show cause had already passed; that his failure not to attend court when the matter came up for dismissal was not deliberate and that the suit should be reinstated and the Plaintiff be given an opportunity to prosecute it.
4. The Plaintiff's advocate finally deponed that the suit involves land on which the Plaintiff has been in possession and occupation for over twenty four (24) years and that he shall suffer irreparable loss unless the suit is heard on merit.
5. The Application was not opposed by the Defendant. The Applicant relied on the Affidavit and did not file submissions.
6. The record shows that this matter was last in court on 9th June, 2010, it was not until 12th October, 2017 that the court issued to the Plaintiff and the Defendants' advocates a Notice to show cause why the matter should not be dismissed for want of prosecution. The Notice to show cause was personally served on the Defendants' advocate's law firm, which is based in Machakos on 18th October, 2017. The Plaintiff's advocate was served with the Notice to show cause by post.
7. The Plaintiff's counsel has deponed that he received the Notice to show cause via post on 24th November, 2017. Other than his official stamp, there is no evidence from the postal office to show that it was not until 24th November, 2017 that the said Notice to show cause was put in his postal address. Indeed, it is inconceivable that a letter which is posted in the month of October from Machakos can take a whole month to reach a recipient in Nairobi.
8. In any event, as I have stated above, this matter was last in court in the year 2010. The last pleading that the Plaintiff's advocate filed was the Statement of agreed issues dated 22nd October, 2010. Although counsel has stated that the file could not be traced in the registry, he has not annexed on his supporting even a single letter in which he requested for the said file.
9. In the absence of a letter complaining about the allegedly missing file, I find that the suit remained dormant since the year 2010 and was ripe for dismissal for want of prosecution on 3rd November, 2017.
10. For those reasons, I find that the Plaintiff has not made out a good case for the reinstatement of the suit. I therefore dismiss the Notice of Motion dated 30th November, 2017 with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JULY, 2018.

O.A. ANGOTE

JUDGE