

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 77 OF 2014

MUGO RIAKATHARI.....PLAINTIFF

VERSUS

MUTHIKE MIANO.....1ST DEFENDANT

JOHN MURIMI GITHUL.....2ND DEFENDANT

PHILIP WAMETHI NJIR.....3RD DEFENDANT

RULING

[1] The applicant filed this application on 1st of March 2017. He seeks for the reinstatement of this suit which was dismissed for want of prosecution on 6th December 2016. It is alleged that the matter was dismissed when it was listed for mention for dismissal and in the absence of the counsel for the applicant and the applicant himself. The applicant avers that he is desirous of proceeding with the suit.

Magee Wa Magee advocate who has the conduct of this case says that the case is not very old being a 2014 case and the same is less than five (5) years old. He avers that the pre-trial directions under **Order II of the Civil Procedure Rules** had not been taken and that the suit was not ripe for dismissal and that the reinstatement will not prejudice the respondent in any way.

[2] This application was opposed by the 1st and 3rd defendants. It was argued that the Notice To Show Cause for dismissal for 6th December 2016 was sent to the parties and to their advocates. On the dismissal day, the defendants attended but the plaintiff's advocate did not attend. The suit was then dismissed for want of prosecution. Further, it is argued that no reasons were advanced to warrant reinstatement of the case. Finally, it is argued that the contention that "**mistake of counsel should not be visited on the client**" is an archaic and tired of principle that is no longer applicable in this day and age and that the client must face full responsibility of the actions and inactions of their counsel because it is they who hired them.

[3] I have perused the Court file and noticed that two notices for dismissal both dated 23rd November 2016 are still in the Court file. They are addressed to Momanyi Gichuki & Co. Advocates of P.O. Box 210 Embu and copied to Maina Kagio & Co. Advocates of P.O. Box 1081 Kerugoya and to District Land Registrar Kirinyaga Central of Kerugoya.

There is no affidavit of service by the process server in the Court file. The next document is the order of 9th December 2016. There is therefore a possibility that the applicant and his client were not served and that explains their absence on 6th day of December 2016

For that reason alone, I allow this application and order that the suit that was dismissed be reinstated. That the same be fast tracked for hearing by complying with **Order II** within the next 60 days failing which the suit will be dismissed.

Parties to fix this suit for hearing upon complying with **Order II**. Their shall be no order as to costs.

S.N. MUKUNYA

JUDGE

20TH JULY, 2018