



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC CASE NO. 77 OF 2012**

**SUTER YOSEI KITARGAT.....1<sup>ST</sup> PLAINTIFF**

**PHILIP KIPLAK SUTER.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JAMES CHEBOI CHESIR.....DEFENDANT**

**RULING**

1. The applicant brought an application dated **17/05/2018** seeking the following orders:-

**(1) That this application be certified urgent and heard urgently.**

**(2) By review or otherwise the order of this honourable court made on 24<sup>th</sup> January, 2018 dismissing the plaintiff's suit be reviewed and set aside and the suit be reinstated and allowed to proceed to full trial.**

2. The application is based on the grounds set out at the foot of the notice of motion. I replicate them verbatim herein below as follows:-

**(i) This honourable court on 24<sup>th</sup> January, 2018 dismissed this matter as part of the "justice at last" initiative.**

**(ii) No notice was issued or served upon the plaintiff under Order 17 rule 2(1).**

**(iii) This information really shocked us because we had been to the registry to further the progress of this suit to no avail at all as we were informed the file was missing.**

**(iv) It is in the interested of justice that this honourable court said order of dismissal on 24/1/2018 be reviewed and set aside and the matter be allowed to proceed to full trial.**

**(v) We learnt of the said dismissal in the registry when we were filing the invitation letter dated 9<sup>th</sup> February, 2018 and 15<sup>th</sup> February, 2018 which had been assessed and payment made vide receipt No. 9033780.**

**(vi) In the meantime the plaintiff has been ill and bed ridden hence the few months delay in filing this application.**

**(vii) This application has been made in good faith without undue delay as we learnt about the dismissal on 15/2/2017(I believe they meant 2018).**

3. The application is also supported by a sworn supporting affidavit of Katama Edward Ngeywa annexed thereto. In that affidavit the deponent reiterates the grounds at the foot of the application.

4. I have perused the application and the file record. What is at issue is whether the plaintiffs were served with the notice to show cause that led to the dismissal of the suit for want of prosecution and whether the application has been made without undue delay and if there has been delay, whether it is excusable.

5. This suit came up in court on the **24<sup>th</sup> January 2018** when the same was dismissed for want of prosecution. I have perused through the court record and I have found no notice to show cause on the record. It is therefore not possible at the moment to determine if any was served

upon the plaintiffs before the matter was listed on the date of dismissal.

6. I therefore accord the applicants the benefit of doubt and I issue the following orders:

**(a) The application dated 17/5/2018 is hereby allowed and the order of this court made on the 24<sup>th</sup> January 2018 dismissing the plaintiff's suit for want of prosecution is hereby vacated and the suit is reinstated for hearing.**

**(b) The plaintiffs' shall appear before this court for a mention on the 18<sup>th</sup> of July 2018 having fully complied in terms of filing documents and witness statements needed to conclude the hearing of plaintiffs' claim in this case.**

**(c) The defendant shall likewise attend court having fully complied fully complied in terms of filing documents and witness statements needed to conclude the hearing of the defendant's defence in this case.**

**(d) A hearing date shall be granted on that date and there shall be no adjournment on the date that the matter will be set down for hearing and the plaintiff and the defendant will have to avail their witnesses and present their documentary evidence to the conclusion of their respective cases.**

It is so ordered.

**Dated, signed and delivered at Kitale on this 12<sup>th</sup> day of July, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**12/7/2017**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Wanyonyi holding brief for Katama for plaintiffs

N/A for the defendant

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**12/7/2018**