



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.346 OF 2010

BARUTHI BUNDI.....PLAINTIFF

=VERSUS=

MUNICIPAL COUNCIL OF THIKA & 8 OTHERS.....DEFENDANTS

RULING

1. This is a ruling in respect of a chamber summons dated 18th May 2017. The application is brought by the Plaintiff/Applicant who seeks to have the orders made on 16th May 2017 set aside.
2. The applicant contends that he was unable to come to court on 16th May 2017 due to a mechanical breakdown to his vehicle as he was travelling from Thika to Nairobi. He further states that he had requested his lawyer to ask the court to wait for him until 2.30 pm but that the judge declined to put the file aside until 2.30 pm but proceeded to dismiss the suit for non-attendance.
3. The applicant's application is opposed by the second defendant/ respondent through a replying affidavit sworn on 18th July 2017. The second respondent contends that the applicant's application is an abuse of the process of the court and that the only remedy available is for the applicant to appeal against the decision of the judge who dismissed the suit.
4. The 3rd, 4th, 5th and 6th respondents have opposed the applicant's application based on a replying affidavit sworn on 18th July 2017. The 3rd, 4th, 5th and 6th respondents have set out the chronology of events which culminated in the dismissal of the suit. They blame the applicant who was not keen on proceeding.
5. I have considered the applicant's application as well as the opposition to the same by the 2nd to 6th respondents. I have also considered the submissions by the 2nd to 6th respondents as well as the submissions by the applicant. The issue for determination is whether the orders of 16th May 2017 should be set aside.
6. This case had been set up for hearing on 16th May 2017. When the matter was called out for hearing, an application for transfer of this case to Thika ELC court was made by counsel for some of the defendants. This application was rejected by the court which then set down the case for hearing at 10.00 am. At 10.00 am counsel for the plaintiff was not in court. An adjournment was made on behalf of the plaintiff's counsel. The matter was placed aside for hearing at 12.00 noon. At 12.00 noon, the plaintiff's counsel requested that the case be adjourned to 2.30 pm. The court declined to adjourn the case to 2.30 pm and proceeded to dismiss the suit for non-attendance on the part of the plaintiff.
7. The dismissal of this suit was arrived at after considering the age of the case and other factors. This was an exercise of the court's discretion. The applicant seems to fault the manner in which the discretion was exercised. It is only the court of appeal which can say whether the discretion was properly exercised or not. I cannot purport to comment on the same because the decision was made by a judge of equal jurisdiction with me. I therefore find no merit in the application. The applicant should approach the proper court. The application is hereby dismissed with costs to the 2nd, 3rd, 4th, 5th and 6th respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of October, 2018.

E.O.OBAGA

JUDGE

In the presence of:

M/s Nyaga for Mr Kamau for 2nd defendant

M/s Nyambura for Plaintiff

Mr Owour for Mr Kahonge for 1st defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE