



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 19 OF 2017**

**EZEKIEL KIPKOECH RONO.....PLAINTIFF**

**VERSUS**

**JOHN KIPGETICH KOECH.....DEFENDANT**

**RULING**

The Application before me is the Plaintiff's/Applicant's Notice of Motion dated 28<sup>th</sup> September, 2018 which is brought under order 12 Rule 7 of the Civil Procedure Rules seeking for the setting aside of the order dismissing the suit and for the reinstatement of the same.

The Application was supported by the Affidavit of one Reuben Cheruiyot Yegon who deponed on the grounds that the suit herein was dismissed because neither the parties nor their advocates were present in court on 18<sup>th</sup> September, 2017 when the suit came up for hearing and that the Applicant was not served after the suit herein was transferred from Nakuru to Narok and lastly that the suit herein was stayed to await the determination of a Judicial Review Application No. 6 of 2012 at Nakuru and lastly the dismissal of the suit shall be prejudicial to the Applicant.

The Application was opposed by the Respondent by way of a Replying Affidavit and he contends that the Applicant was served with a Notice To Show Cause why the suit should not be dismissed and when they failed to attend court the suit was thus dismissed.

I have read the Application before me and without looking at any other matter I find that the suit herein was stayed on 20<sup>th</sup> September, 2013 by Hon. Lady Justice L.N. Waithaka pending the hearing and determination of Judicial Review No. 6 of 2012.

I have not seen evidence the aforesaid Judicial Review Application was concluded to have this suit heard or any order varying or setting aside L.N. Waithaka J order of 20<sup>th</sup> September, 2013 and in view of the above, and in the interest of justice I will allow the Application dated 28<sup>th</sup> September, 2017 and I consequently set aside my order of 18<sup>th</sup> September, 2017 and other consequential orders I made thereafter and the suit here is accordingly reinstated. Each party shall bear its costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **18<sup>th</sup>** day of **October, 2018**

**Mohammed Noor Kullow**

**Judge**

**18/10/18**

In the presence of:-

Ms Nchoe holding brief for Koceyo for the Defendant/Respondent

N/A for the Plaintiff/Applicant

CA:Chuma