



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 69 OF 2017

MORRISON MBARO THUKU.....PLAINTIFF/APPLICANT

VS

LANDLUCK INVESTMENTS LIMITED.....1ST DEFENDANT/APPLICANT

THIKA DISTRICT LAND REGISTRAR...2ND DEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant filed suit against the Defendants on the 4/3/2014. On the 25/1/2017 the file was transferred to Murang'a ELC Court from Kerugoya. The matter was set for mention before the Court on the 13/2/2017. The parties failed to turn up in Court on the said date and the Court directed that the file be taken back to the Registry to allow parties take new dates. It would appear that no new dates were taken by the parties. The matter came up again for mention before the Hon Judge on the 5/4/2017 when the Court ordered mention notices to be issued to the parties. The mention notice dated the 21/12/2017 was issued for mention of the matter on the 14/2/2018. According to the mention notice the parties seem to have been served through their advocates on record; Messrs Waiganjo Wachira for the plaintiffs and Kiama Wangai for the Defendants. That notwithstanding the parties and their advocates were absent in Court and the Hon Court dismissed the matter for want of prosecution and/or non-attendance.

2. This prompted the applicant to file a Notice of Motion dated 17/7/2018 seeking the following orders;

- a) That the order made on the 14th February 2018 dismissing the suit filed herein be reviewed.
- b) That the suit filed herein on 4th March 2014 be reinstated and set down for hearing.
- c) That the costs of this application be provided for.

3. The application is grounded on the following grounds;

- a) That the Plaintiff in particular, was not properly afforded a chance to be heard before the said order was made.
- b) That the Advocate on record for the Plaintiff received the mention notice from Murang'a Law Courts when the event had been overtaken by time as the same was served upon the Plaintiff's former Counsel and on perusing the Court file he found the matter had been dismissed.
- c) This application had been made without unreasonable and/or undue delay.
- d) That in the interests of justice, the said order ought to be reviewed.

4. The application is supported by the affidavit of Daniel Gachau Mwangi Advocate where he deponed that the mention for directions was served on the previous advocates of the Plaintiff Messrs Waiganjo Wachira and yet the said advocates had ceased acting and he has annexed a notice of change of advocates filed on 22/7/2016. That the mention notices were therefore served on the wrong advocates and by the time they were rerouted to his firm the suit had been dismissed.

7. The Respondent did not oppose the application despite being served on the 20/7/2018 as shown by the affidavit of service dated the even date.

8. The Court has considered the application and according to the record, it is correct that the notices were served on the previous advocates of the Plaintiff while the change of advocates had taken place in 2016. The application was filed the same day hence timeously. Guided by

Article 159 2(d) of the constitution and the overriding objectives stated in Section 1A and 1B of the Civil Procedure Act, the Court is satisfied of the reasons advanced by the Plaintiffs and in the interest of justice exercise my discretion to set aside the orders granted on 14/2/2018 on condition that the suit be set down for hearing within the next 45 in default the case shall stand dismissed.

9. Costs shall be in the cause.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 11TH DAY OF OCTOBER 2018

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

JB Mwangi HB for Gachau for the Plaintiff/Applicant

Defendant/Respondent 1- Absent

2 – Absent

Irene and Njeri, Court Assistants