



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**E.L.C. CASE NO. 764 OF 2012**

**ONESMUS NGIGI MUNYAMBU.....1<sup>ST</sup> PLAINTIFF**

**GRACE WANJIKU NGIGI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MINIMI ENTERPRISES LIMITED.....DEFENDANT**

**RULING**

Through the application dated 20/12/2017, the Plaintiffs seek to set aside the order made by the court on 18/7/2017 dismissing the suit for non- appearance of their advocate. They seek the reinstatement of the suit and for it to be heard on merit. The application is supported by the Plaintiffs' advocate's affidavit sworn on 20/12/2017. The advocate depones that the matter was scheduled to come up for mention on 18/7/2017. Being under the impression that it would be mentioned in the Thika Environment and Land Court since they had requested to have the file transferred to Thika E.L.C, he attended court in Thika but to his dismay the matter was not listed. The advocate urges that the mistake of counsel should not be visited on the Plaintiffs.

The Defendant filed grounds of opposition urging that the application was made with delay and that the court record demonstrates that the Plaintiffs do not deserve the orders they seek.

Parties filed submissions. The Plaintiffs urged the court to reinstate the suit while the Defendant argued that the suit was certified ready for hearing on 8/7/2015 and that parties knew that it would be heard in Nairobi since no order had been made to transfer the suit to Thika E.L.C. The Defendant urged that the delay on the part of the Plaintiffs was inordinate and inexcusable. Further, that the defence stands to suffer great prejudice if the case is not prosecuted expeditiously.

The court has perused the record and found no application or order transferring the matter to Thika. If indeed the Plaintiffs' advocate attended court on 18/7/2017 in Thika presuming the matter would be listed there, he ought to have perused the court file immediately thereafter which would have shown him that the suit had been dismissed on 18/7/2017 at Nairobi. He would then have filed the application to reinstate the suit without delay. No explanation was given as to why it took more than six months for the application to reinstate the suit to be filed.

The court agrees with the Defendant that it ought not to exercise its discretion in favour of the Plaintiffs. The application dated 20/12/2017 is dismissed with costs to the Defendant.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of October 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Lubano holding brief for Mr. Karanja for the Plaintiffs

Mr. Chege for the Defendant

Mr. J. Okumu- Court Assistant