



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**ELC MISC.APPLICATION NO. 11 OF 2017**

**GRACE WAMBUI NJAMBUYA - APPLICANT**

**VS**

**JOHN WAWERU WAMAI - RESPONDENT**

**RULING**

1. The Applicant filed the Notice of Motion dated 17/10/18 under Order 12 Rule 7, Order 51 Rule 1 of Civil Procedure Rules and Section 1A, 2, 3, 1B (1) of the Civil Procedure Act and all other enabling provisions of the law. She sought that the orders made on 29/11/17 be set aside and/or reviewed and the Miscellaneous application to be reinstated.

2. The Applicant has stated in both the grounds of the application and in her supporting affidavit sworn on 17/10/18 that the suit was filed in Nyeri on the 10/8/16 and was not notified when the said suit was transferred to Murang'a Environment and Land Court for hearing and determination. That her failure to attend Court on the 29/11/17 was not intentional. She urged the Court to reinstate the matter so that it may be heard on its merits.

3. The application is opposed by the Respondent who filed grounds of opposition on the 24/10/18 as thus;

a. The application is frivolous vexatious and an abuse of the due process of the Court.

b. That the Applicant has not explained the inordinate delay between the time the application was dismissed on 29/11/17 and the time for filing of the present application on the 17/10/18, a period of one year.

c. Reinstating the Notice of Motion dated the 10/8/16 will be an exercise in futility as the Court has no jurisdiction and/or powers to issue substantive reliefs through a notice of motion.

4. On the 21/11/18 in the absence of the Respondent and his counsel the Applicants counsel proceeded to argue the application orally before the Court. He placed reliance on the grounds of the application together with the supporting affidavit duly sworn by the Applicant aforesaid. That the Applicant was not notified of the transfer of the suit to this Court and her failure to attend Court was not intentional.

5. I have perused the file and it emerges that on the 25/1/17 the Applicant fixed the Notice of Motion filed on the 10/8/16 for 9/3/17. Come the 9/3/17 the Court ordered the transfer of the file to Murang'a Environment and Land Court. According to the Court record the Applicant was present in person. The Respondent too was represented by Ms Mukuha Advocate on that day. It is the finding of this Court that the Applicant was indeed aware of the orders of the Court issued on 9/3/17 and the affidavit sworn by the said Applicant is nothing but untruths and misleading to this Court. It is also on record that the letter of the Deputy Registrar Environment and Land Court Nyeri dated the 10/3/17 forwarding the file to Environment and Land Court Murang'a was copied to the Applicant at the address given by the Applicant in her pleadings. There is no evidence that the Applicant received it.

6. This Court concurs with the Respondent that the Applicant has not explained the delay in filing this application. The Applicant has contended that she was not aware of the hearing of the matter on 29/11/17. I have perused the record and it would appear that she was served through the law firm of Kirubi & Company Advocates. According to the affidavit of service on record it is not clear how if any the Applicant was served. It is not manifestly clear why the Applicant was being served through the law firm of Kirubi & Company Advocates and yet the Applicant had hitherto been representing herself. In addition there is an address on record through which she ought to have been served.

7. In view of the finding in Para 6 the Court finds that though the Applicant was aware of the transfer of the file to Murang'a she was not served with the mention notice for the 29/11/17 and for that reason the Court is inclined to allow the application for reinstatement of the application. The Court is satisfied that there is no prejudice that will be occasioned to the Respondent that cannot be compensated by costs.

8. The application filed on the 17/10/18 is allowed.

9. The Applicant is directed to fix the matter for hearing within the next 14 days in default the same shall stand dismissed.

10. Costs in the cause.

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 29<sup>TH</sup> DAY OF NOVEMBER 2018.**

**J G KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

T M Njoroge for the Applicant.

Respondent - Absent

Irene and Njeri, Court Assistants