



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 106 OF 2014

DISMAS WAMALWA.....PLAINTIFF/APPLICANT

VERSUS

JAMIN MULONGO MANANA.....DEFENDANT/RESPONDENT

RULING

1. The application dated **24th September, 2018** prays for the orders that leave be granted to the plaintiff/applicant to file and serve the list of documents out of time. He also prays for costs be in cause.
2. The application is supported by the affidavit of the applicant sworn on **24/9/2018**.
3. The plaintiff/applicant filed his submissions on **22/10/2018** and the defendant/respondent on **28/10/2018**

Determination

4. On **31st July 2018** this court reinstated the plaintiff's suit which stood dismissed for want of prosecution on the **21st** day with effect from **31/7/2018**. The list and copies of documents were filed on **22nd August 2018**. The plaintiff appears to appreciate that the suit stood dismissed as at that date. He argues that the **21** days granted for the filing of the list and bundle of documents expired on **21/9/2018** and that it is in the interests of justice that he be granted leave to file and serve the list and documents out of time.
5. The defendant's response is that by 22/8/2018 there was no suit the time granted having expired and that there is no ex parte judgment ordered and the orders sought should not be granted.
6. It is true that there was no ex parte judgment entered against any party in this suit. The timelines set by this court expired before the actions specified were undertaken by the plaintiff hence his suit was deemed as automatically dismissed. An order different from the ones sought now in **prayer (2)** should have been sought first before leave to file and serve the documents out of time was sought.
7. As things stand now, there is still no suit as it has not been reinstated. The second prayer is therefore also not merited. I therefore strike out the application dated **4/9/2018** with costs to the defendant.

Dated, signed and delivered at Kitale on this **28th** day of November, **2018**.

MWANGI NJOROGE

JUDGE

28/11/2018

Coram

Before - Hon. Mwangi Njoroge Judge

Court Assistant: Picoty

Dismas Wamalwa present in person

N/A for the respondent

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

28/11/2018