



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 25 OF 2009**

**THE LEGAL REPRESENTATIVES OF**

**GREGORY KIMANI THUITA (DECEASED).....PLAINTIFF**

**-VERSUS-**

**THE ADMINISTRATORS OF THE ESTATE**

**OF DAVID MURIUKI KABERERE.....1<sup>ST</sup> DEFENDANT**

**SUSAN WANJIRU KABERERE.....2<sup>ND</sup> DEFENDANT**

**THE CITY COUNCIL OF NAIROBI.....3<sup>RD</sup> DEFENDANT**

**RULING**

The Plaintiff seeks to reinstate this suit which was dismissed on 3/5/2018 in the application dated 27/6/2018. The Plaintiff seeks to set aside the dismissal order which was given for failure to comply with the directions of the court. The court directed in its ruling of 1/11/2017 that the suit was reinstated on condition that it was heard and determined within six months. The suit had earlier been dismissed by Mutungi J. on 26/5/2015. The Plaintiff made an application on 8/6/2017 to reinstate the suit, which was two years after the order of dismissal was made.

Following the court's decision of 1/11/2017 when the Plaintiff was represented, the Plaintiff did not take any action. The court directed on 1/11/2017 that the hearing would proceed on 22/2/2018 and parties were to appear before the Deputy Registrar for pre-trial compliance on 15/11/2017. The matter came up on 15/11/2017 and was set down for mention on 18/1/2018 with the Plaintiff being directed to comply with order 11 of the Civil Procedure Rules. None of the parties appeared on 18/1/2018 and the matter was put off to 22/2/2018 for mention. The Plaintiff's advocate informed the Deputy Registrar on 22/2/2018 that they needed more time to comply as their witness was unwell. The advocate also pointed out that there was an order issued by the court for the matter to be heard and determined in six months. The court notes that the Plaintiff applied for a copy of the order issued on 1/11/2017 through their letter received in court on 20/4/2018.

Going by the history of this matter, the court is not satisfied that the Plaintiff has been keen to prosecute this matter which is old. The court declines to exercise its discretion in favour of the Plaintiff to reinstate this suit. The application dated 27/6/2018 is dismissed.

**Dated and delivered at Nairobi this 28<sup>th</sup> day of November 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. S. Chege holding brief for Mr. Mumia for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendants