



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO.361 OF 2013

ANTIPA MOLO OONGO.....PLAINTIFF/APPLICANT

VERSUS

PETER OCHIENG' CHORE.....1ST DEFENDANT/RESPONDENT

MAURICE ACHOLA CHORE.....2ND DEFENNDANT/RESPONDENT

DANIEL OKOTH OCHURE.....3RD DEFENDANT/RESPONDENT

RULING

1. Antipa Molo Oongo, the Plaintiff, filed the notice of motion dated 8th March 2018 seeking “to review and or set aside the orders of dismissal of this suit dated the 20th February 2018” and costs. The application is based on the (9) nine grounds on its face marked (a) to (i). The application is supported by the affidavit sworn by the Plaintiff on the 8th March 2018 to which is annexed several medical treatment notes from various health facilities dated between 2014 and 2018.

2. The application was served on counsel for the Defendants but no replying papers in opposition were filed.

3. The application came up for hearing on the 24th September 2018 when the Plaintiff submitted that he was relying on the contents of his filed application and supporting affidavit.

4. The issues for determination is primarily whether the Plaintiff has presented reasonable explanation as to why he took more than one year without taking steps to prosecute his case.

5. The court has carefully considered the grounds on the notice of motion and the affidavit evidence and come to the following determinations;

a) That the Defendants did not file any notice to raise preliminary objection or replying affidavit or statement of grounds of opposition in reply to the notice of motion as required under **Order 50 Rule 14 (1) of Civil Procedure Rules**. That the Plaintiff was therefore heard exparte as provided for under **Sub-rule (4)** of the said Order.

b) That though the Plaintiff did not specify what date in March 2018 that he received the notice to show cause that came up for hearing on the 20th February 2018, he has availed documentary records that confirm that he has been undergoing some treatments for some four or five years that may have prevented him from pursuing the prosecution of this case.

c) That as the Plaintiff filed the application about (18) eighteen days after the suit was dismissed, and has undertaken to ensure the suit is prosecuted without undue delay on his part, the court finds merit in his application.

6. That for reasons set out above, the Court orders as follows;

a) The Plaintiff’s notice of motion dated 8th March 2018 is hereby allowed with costs in the cause.

b) That the dismissal order of 20th February 2018 is hereby set aside and the Plaintiff’s suit reinstated for hearing.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 14TH DAY OF NOVEMBER 2018

In the presence of:

Plaintiff Absent

Defendants Absent

Counsel Absent

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE