



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 233 OF 2017

DAVID WAHOME MBEU.....PLAINTIFF

VS

CATHERINE WANJIRU MAINA.....1ST DEFENDANT

MWANGI MAINA.....2ND DEFENDANT

RULING

1. The Plaintiff filed this case against the Defendants on 2/7/14 inter alia an order for permanent injunction and a cancellation of title in the name of the 2nd Defendant.
2. The Defendant failed to enter appearance nor file any defence and the Plaintiff obtained interlocutory judgment on the 24/9/14.
3. The Court issued a notice to show cause on the 7/3/18. According to the affidavit on record and dated the 27/4/18 the same was served on the Plaintiffs advocate Messrs Thuku and Associates.
4. On the 3/5/18 neither the Plaintiff nor his advocate was present in Court and the Court dismissed the matter for non-attendance and want of prosecution.
5. On the 9/5/18 the Plaintiff filed an application under certificate of urgency and urged the Court to reinstate the suit so that it may be heard on its merits. He attributed the non attendance of Court on the 3/5/18 to the fault of his previous advocates Messrs Thuku & Associates and pleaded with the Court not to visit the mistake of Advocate on him. That no injustice shall be occasioned to the respondents if the case is reinstated. Further that he has an arguable case with high chance of success.
6. I have read and considered the submissions by the Plaintiff filed on the 2/7/18.
7. Having reviewed the matter in totality, the Plaintiff obtained interlocutory judgment in 2014 and to date the matter has not been listed for formal hearing. Despite the Court issuing a notice to show cause why the suit should not be dismissed, the Plaintiff failed to do so. He has attributed this failure to the mistake of his Advocates.
8. The power vested in the trial Court to set aside the order dismissing the suit for non-attendance is contained in the provisions of Order 12 rule 7 of the Civil Procedure Rules. It is a discretionary power that is exercised by the Court.
9. Going by the explanations given by the Plaintiff and guided by Article 159 of the Constitution to do substantive justice, I grant the application on condition that the matter be listed for hearing within the next 14 days from the date hereof in default of which it stands dismissed.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH NOVEMBER 2018

J.G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Thuku HB Mburu Machua for the Plaintiff

1st and 2nd Defendant – Absent

Irene and Njeri, Court Assistants