



## REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

ELC NO. 224 OF 2017

JAMES MWANIKI KINUTHIA.....PLAINTIFF

VS

IDD RAJAB.....DEFENDANT

### RULING

1. On 13/2/17 the Court made an order in the presence of the Plaintiff's Advocate and in the absence of the Defendant's Advocate that the case be mentioned on 18/1/18. On the 18/1/18 both parties and all their advocates did not attend Court. Consequently, the Court dismissed the case for want of attendance.
2. On the 9/7/18 the Plaintiff filed an application seeking reinstatement of the suit. The application is supported by the affidavit sworn by the Plaintiff on 6/7/18 and a further affidavit of even date by the Plaintiff's Advocate namely, Julius N Kirubi Advocate.
3. The Defendant through his Advocate on record filed an affidavit in response to the averments to the Plaintiff and his Advocate. The parties have also filed written submissions on the 23/8/18 and 19/9/2018 by the Defendant and Plaintiff respectively.
4. The Court has considered the Notice of Motion, the rival affidavits filed and the written submissions filed by the parties. 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.
5. The Court has considered the reasons for non-attendance of Court of the Plaintiff on the material date. More particularly that the Plaintiff has expressed desire to prosecute his case and has engaged the services of a new Advocate. The Court is satisfied that the non-attendance by himself and his previous Advocate was not intentional nor meant to defeat the course of justice.
6. In the circumstances the Court is inclined to allow the Plaintiff's application dated the 6/7/18 as prayed with no orders as to costs.

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 8<sup>TH</sup> NOVEMBER 2018**

**J.G. KEMEI**

**JUDGE**

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

Mbuthia for the Plaintiffs

Defendant 1

Defendant 2

Defendant 3

Defendant 4

Defendant 5

Defendant 6.....Kirubi for the Defendants.

Irene and Njeri, Court Assistant