

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 37 OF 2015 (O.S)

JAMES NJERU KAMAU.....PLAINTIFF

VERSUS

ROBERT NDIGA KAGWI.....1ST DEFENDANT

S. KAMAU KANGETHE.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The Applicant James Njeru Kamau has moved this Court vide a Chamber Summons dated 18th June 2018 under all enabling provisions of the Civil Procedure Act (2010) seeking an order to reinstate this suit which was dismissed for want of prosecution on 25th January 2018. In his grounds in support shown in the face of that application, the Applicant stated that the delay in prosecuting this case was caused by his decision to investigate the status of the suit land at Kerugoya Land Registry so as to enable him facilitate an amendment to the suit. The Applicant also stated that he was not notified of the notice to dismiss this suit as he has good explanation why the suit should not be dismissed. On 31st August 2018, the 1st defendant filed a replying affidavit supporting the Applicant's application.

I have considered the averments contained in the Chamber Summons dated 18th June 2018 and the supporting affidavit sworn by the Applicant the same date. I have also perused the Court file where the Applicant was served with the dismissal Notice via EMS through the registered Post Number 131 Embu on 5th January 2018. A certificate of posting is filed in Court. That is the same address which the Applicant (plaintiff) gave in his pleadings filed in Court. The said letter has not been returned uncollected. The plaintiff/Applicant has not said that he changed his address. It is therefore presumed that he received the said notice of dismissal which was coming up for hearing on 25th January 2018.

I have also noted that this suit was filed by way of Originating Summons on 7th April 2015. There were no summons issued and signed by the Court. I also note from the Court record that on 18th April 2015, this Court allowed the plaintiff/Applicant leave to serve the 1st and 2nd defendants with the Originating Summons in respect of this suit by way of substituted service by way of advertisement in the Daily Newspapers. There is no newspaper cutting showing that the plaintiff/Applicant complied with the Court order. For the reasons I have given herein above, I find no good reason why the orders issued on 25th January 2018 dismissing this suit for want of prosecution should be reviewed and/or set aside. There are no reasons why the plaintiff failed to take pragmatic steps to prosecute this case since it was filed in 2015.

In the upshot, the application dated 18th June 2018 is hereby dismissed with no order as to costs.

DATED, DELIVERED and SIGNED in open Court at Kerugoya this 1st day of November 2018.

E.C. CHERONO

ELC JUDGE

1ST NOVEMBER, 2018

In the presence of: