

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 2263 OF 2007

AGGREY SIMIYU WANDA.....PLAINTIFF

VERSUS

NANCY W. NJUMBI.....1ST DEFENDANT

TOWN CLERK CITY COUNCIL OF NAIROBI...2ND DEFENDANT

CITY COUNCIL OF NAIROBI.....3RD DEFENDANT

RULING

Coming up before me for determination is the Chamber Summons dated 19th June 2015 in which the Plaintiff/Applicant seeks for an order reinstating this suit.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, Aggrey Simiyu Wanda, sworn on 19th June 2015, in which he averred that on 15th May 2015, he saw an advertisement in the Daily Nation giving a public notice that all cases listed in the cause list for the year 2007 and below would be listed for dismissal for want of prosecution. He averred further that this led him to obtain a copy of the cause list but would not find this suit listed. He added that upon making enquiries at the ELC Registry, he was informed that this suit had already been dismissed for want of prosecution by Justice Onguto. He averred further that judgment had previously been entered in his favour against the 1st Defendant and that the matter was only waiting to proceed for formal proof. He asserted that he was never served with a copy of the appropriate notice nor did he read or see any public notice in the local daily newspapers notifying him of the intent to dismiss the case. He prayed for the court to reinstate this suit to enable him to reclaim his property on the basis of merit based on evidence.

The Application is not contested.

I am called upon to determine whether or not to reinstate this suit which was dismissed by Justice Onguto on 11th March 2015 pursuant to a Notice to Show Cause. The gist of the Plaintiff's argument is that he was never served with the Notice to Show Cause. He claims that he was also not notified through any other means that his suit was coming up for dismissal for want of prosecution. He stated that he only came to learn of the dismissal after the fact.

The applicable law is **Order 17 Rule 2(1) of the Civil Procedure Rules, 2010** which provides as follows:

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

This legal provision states that the court may give notice in writing to the parties to show cause why the suit should not be dismissed. I have perused this court file and do not that a Notice to Show Cause dated 26th February 2015 was posted to the Plaintiff's address being P.O. Box 55878-00200 Nairobi. In that notice, it was indicated that this suit would be listed on 11th March 2015. This appears to be the same address that the Plaintiff gave to the court to notify him when this Ruling is ready for delivery. This means that the Notice to Show Cause was posted to the correct address.

The Plaintiff notified the court of his intention to act in person on 11th November 2011. A few days later, precisely on 22nd November 2011, he fixed this matter for hearing on 28th February 2012. The matter appears not to have been listed on that day but it is also apparent from the court record that since that day up until 11th March 2015, a period in excess of 4 years, the Plaintiff/Applicant took no steps to set this suit down for hearing. This is indicative of a serious lack of interest in this suit. It is only when the suit was dismissed for want of prosecution that the Plaintiff appears to have awoken up out of his deep slumber. I am not convinced that the Plaintiff has been diligent in prosecuting this suit and I am also not convinced that he did not receive the posted Notice to Show Cause. With this background, I find that I should not exercise my discretion in favour of the Plaintiff as he is the one who has failed to prosecute his suit expeditiously.

In light of the foregoing, this Application is hereby dismissed with no order as to costs.

DELIVERED, SIGNED AND DATED AT NAIROBI THIS 27TH DAY OF JANUARY 2017.

MARY M. GITUMBI

JUDGE