

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

CASE NO. 70 OF 2016

TERESIA ATURWA ATONYI.....PLAINTIFF / APPLICANT

- VERSUS -

FANUEL MUGWANG'A LIHANDA.....DEFENDANT/ RESPONDENT

RULING

This Notice of Motion is brought under Section 98 of the Civil Procedure Act and under order 52 Rule 1 of the Civil Procedure Rules seeking the following orders;

1. That the Honourable Court be pleased to set aside its order made on the 8th July 2015 dismissing this suit for want of prosecution.
2. That any other orders be made as the Court may deem just in the circumstances.

The Applicant submitted that she was not aware that this matter was coming up for hearing on the 8th July 2015 for dismissal for want of prosecution. Counsel for the Applicant has for a long time been looking for the court file which went missing in the registry. When the Counsel wanted to file an application to reconstruct the court file is when they discovered that it the suit had been dismissed for want of prosecution. The delay on prosecuting the matter was not deliberate. The Respondent was served but failed to attend court and the matter proceeded unopposed.

This court has perused the court file and sees no evidence that indeed the parties were ever served with the notice to show cause on the dismissal of this matter. Both parties were absent on the material day and the matter was dismissed. The Applicant in her supporting affidavit has annexed letters to show that the Counsel on record had written to the Deputy Registrar looking for the file as it had gone missing. I find this application has merit and I grant it as prayed. Costs to be in the cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH MARCH 2017.

N.A. MATHEKA

JUDGE