

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC CASE NO. 51 OF 2010

PETER MUTUA NDETO

GEOFFREY KAMAU WANYOIKE

JASON MASIMBA

PETER NJUGUNA.....PLAINTIFFS

(Suing on behalf of Seventh Day Adventist Church)

VERSUS

ANTHONY KANGETHE KARI.....DEFENDANT

RULING

Under Order 12 Rule 7 of the Civil Procedure Rules, this court has power to reinstate a suit which has been dismissed for non-attendance. When this suit came up for hearing on 29th September 2015, the Plaintiffs and their advocates did not appear and on application by the Defendant, the suit was dismissed for non-attendance. What is now before me is the Plaintiffs' Notice of Motion application dated 19th January 2016 seeking to set aside the order of dismissal of the suit which was made on 29th September 2015 aforesaid. The Plaintiffs have contended that they were in court on the hearing date of 29th September 2015 but when this case was called out, they did not realize that it was their case because their names were not mentioned by the court assistant. It was after they made inquiries with the court assistant that they were informed that the case had been called out and dismissed. The Plaintiffs placed evidence before the court showing that they indeed attended court on the material day. In his affidavit which was filed in support of the application, the Plaintiff's advocate, Justry Lumumba Nyaberi stated that the Plaintiffs were in court on 29th September 2015 when the matter came up for hearing. He stated that he was not in court when the matter was called out because he was attending to another matter in a different court. He stated that when he ultimately came to this court, he found when the matter had been called out and dismissed. He annexed a cause list showing that he had a matter in another court on the material day.

The application was opposed by the Defendant who contended that there was no evidence that the Plaintiffs were in court on 29th September 2015. The Defendant contended further that the application was brought after inordinate delay. I have considered the Plaintiff's application and the opposition thereto by the Defendant. I am satisfied that the Plaintiffs have given reasonable explanation why they did not respond when this matter was called out for hearing on 29th September 2015 resulting in the dismissal of the same. There is no evidence that any prejudice or injustice would be occasioned to the Defendant if the suit is reinstated. I am of the view that it would serve the interest of justice in the circumstances if the court exercises its discretion in favour of the Plaintiffs.

For the foregoing reasons, I find merit in the application dated 19th January 2016. The same is allowed with costs to the Defendant.

Delivered and signed at Nairobi this 28th day of April, 2017.

S. OKONG'O

JUDGE

In the presence of:

Mr. Wambua h/b for Nyaberi

For the Plaintiff

N/A

For the Defendant

Kajuju

Court Assistant