



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC. CASE NO. 210 OF 2009

MRS. KILOKO M. NDETI.....1ST PLAINTIFF
GREGORY M. NDETI2ND PLAINTIFF
N. NZIOKA NDETI3RD PLAINTIFF
BERNARD M. NDETI.....4TH PLAINTIFF
FEDILIS NZOMO NDETI5TH PLAINTIFF
JOHN NDETI MUTHEKE6TH PLAINTIFF

VERSUS

KIVUO NDETI.....1ST DEFENDANT
PETER NZUKI NDETI.....2ND DEFENDANT

RULING

1. The Application dated 28th February, 2017 is seeking to set aside the orders of this court of 22nd February, 2017 dismissing the suit.
2. The Application is based on the grounds that the Plaintiffs have always taken active steps to prosecute the suit; that non-attendance of the court on 22nd February, 2012 was an inadvertent mistake of the Advocate; that the Application has been filed without delay and that the mistake of the advocate should not be visited on his client.
3. The Plaintiffs’ counsel submitted that when the matter came up for hearing of the Application dated 22nd July, 2013, he did not attend because he was in Nairobi before the High Court in Civil Case No. 717 of 2007 and 287 of 2015; that he sent his associate to attend court and that his associate informed him that he found the matter had already been called out and the Application dismissed.
4. Counsel deponed that being a land matter, it is only just and fair that the Application which was dismissed should be reinstated.
5. The Application was not opposed by the Respondents.
6. The record shows that the Application dated 22nd July, 2013 was fixed for hearing on 22nd February,

2017. On the said date, neither the Plaintiffs nor their advocate was in court. The Application was dismissed by the court *suo moto* for want of prosecution.

7. Although the Plaintiffs' counsel has deponed that he sent his associate to prosecute the Application, the said associate has not deponed why he came to court after 9.00a.m, if at all.

8. In the absence of a good reason as to why the Plaintiffs' counsel was not in court on 22nd February, 2017 when the matter was called out, I decline to set aside the orders of 22nd February, 2017.

9. For those reasons, I dismiss the Application dated 28th February, 2017 with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22ND DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE