

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 69 OF 2003

JULIUS MONZI MUIA1ST PLAINTIFF

EUNICE NDINDA MONZI2ND PLAINTIFF

JOHN NZIOKA MUTETI3RD PLAINTIFF

VERSUS

THOMAS MUTHIANI NZIOKA1ST DEFENDANT

OLKEJUADO COUNTY COUNCIL2ND DEFENDANT

RULING

1. In the Application dated 28th March, 2017, the Plaintiffs are seeking for the following orders:

a. That the order made on 21st March, 2017 dismissing the Plaintiffs' suit for non-attendance be set aside and the suit be reinstated for hearing.

b. That costs of this Application be in the cause.

2. The Application is based on the grounds that the Plaintiffs and their advocates were not aware that the suit had been fixed for hearing on the material date and were not served with a hearing notice.

3. According to the Plaintiffs' advocate, he was not aware that the court had fixed the matter for hearing and that they never received a hearing notice which is in the court file.

4. The record shows that on 21st March, 2017, this matter was dismissed by the court for want of prosecution.

5. I have perused the file and found a "Hearing Notice" by the court for 21st March, 2017.

6. Although the suit was dismissed by the court on 21st March, 2017 pursuant to the provision of Order 17 Rule 2(1) of the Civil Procedure Rules, it would appear that what was served on the Plaintiffs' advocate by the court was "a Hearing Notice" and not "a Notice to Show Cause" why the suit should not be dismissed for want of prosecution.

7. Due to that anomaly, and considering that the Plaintiffs' advocate had actually attempted to fix the matter for hearing vide his letter dated 14th July, 2016, without success, I shall grant to the Plaintiff an opportunity to prosecute his claim.

8. For those reasons, I allow the Application dated 28th March, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 9TH DAY OF NOVEMBER, 2017.

O. A. ANGOTE

JUDGE