



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 34 OF 2008**

**KENYA ANTI-CORRUPTION COMMISSION .....PLAINTIFF**

**VERSUS**

**WILSON GACANJA .....1<sup>ST</sup> DEFENDANT**

**S.K. MWATA.....2<sup>ND</sup> DEFENDANT**

**REUBEN MUSENGI MWANGE .....3<sup>RD</sup> DEFENDANT**

**FRANCIS MWANZIA NATHAN .....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff has filed an Application dated 5<sup>th</sup> April, 2017 in which he is seeking the setting aside of the order of 27<sup>th</sup> March, 2017 dismissing the suit.
2. The Application is based on the grounds that the Applicant's lawyer received the notice of dismissal on 27<sup>th</sup> March, 2017; that the notice was sent to its headquarters and that the delay in prosecuting the suit was occasioned by Machakos Judicial Review Application Number 130 of 2011.
3. The Applicant's advocate has deponed that the order of dismissal was made without any fault on the part of the Applicant and that the suit should be reinstated.
4. In response, the 1<sup>st</sup> Defendant filed Grounds of Opposition and averred that the Plaintiff has never been interested in prosecuting the suit; that the 1<sup>st</sup> Defendant ceased to be the Commissioner of Lands in the year 1999 and that the Plaintiff has not met the threshold set out under Order 12 Rule 7 of the Civil Procedure Rules.
5. The Plaintiff's and the 1<sup>st</sup> Defendant's advocate filed their respective authorities which I have considered.
6. The Plaintiff has admitted that it received the Notice to show cause why the suit should not be dismissed.
7. The Plaintiff has annexed on its Supporting Affidavit the copy of the notice. On the face of the said notice, it is shown that the notice was received in the Plaintiff's office on 27<sup>th</sup> March, 2017 at 11.03a.m, which was the same day that this court dismissed the suit for want of prosecution.
8. Having read the Affidavit of the Plaintiff's advocate and having perused the copy of the Notice that has been annexed on the Plaintiff's Supporting Affidavit, I have no reason to dispute the Plaintiff's assertion that it received the Notice to show cause why the suit should not be dismissed for want of prosecution on the same day the matter came up for dismissal. The Plaintiff's counsel could not have therefore been in a position to attend court on the said day.
9. In the circumstances, and for the reasons I have given above, I allow the Plaintiff's Application dated 5<sup>th</sup> April, 2017.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**