



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 162 OF 2017

FORMERLY MERU ELC. 13(a) OF 2012

ANN KAGENI.....PLAINTIFF

VERSUS

SALESIO GITARI FRANCIS.....DEFENDANT

RULING

1. This application is dated 27th November, 2017 and seeks orders:

1. That the court be pleased to set aside and or vacate the dismissal order of 23rd November, 2017 dismissing the entire suit and the court be pleased to reinstate the suit for hearing.

2. Cost of the application be provided for.

2. The application has the following grounds:-

(a) That while the applicant was in court for other business in the lower court she was informed by a clerk in the ELC registry that the applicant's case had been listed for dismissal on 23rd November, 2017.

(b) That on 23rd November, 2017 the applicant despite having an injured leg walked from her home at Kibumbu village to the Law Courts and by the time the applicant reached the court she found out that the matters had been called out at the waiting bay.

(c) That on inquiry the applicant was told that her case was in the "high court" and which court room was upstairs.

(d) That the applicant then went and sat in the high court (instead of E.L.C. Court) and waited for her case to be called out but in vain.

(e) That while the applicant was in the "high court" a person from the applicant's village who knew the applicant well informed the applicant that she had heard the applicant's name being called out in the E.L.C. Court.

(f) That the applicant then proceeded to the E.L.C. Court only to find out that the court was in

progress but the applicant's file was not called out.

(g) That when the court went on for break the applicant contacted the court clerk only to be told that the matter had been called out earlier and the suit dismissed.

(h) That the applicant then consulted an advocate in town who advised her to apply to the court for orders setting aside or vacating the dismissal orders of 23rd November, 2017.

(i) That the applicant did not knowingly and willingly fail to attend court when the suit was dismissed and her failure to be in court was a mistaken identity of the court room and inadvertent.

(j) That substantive justice of this case should persuade the court to reinstate the applicant's suit and the same be determined on merit.

(k) That the orders sought are the most apt and best in the circumstances and no party stand (sic) to suffer any prejudice in the event that the suit is reinstated and set down for hearing.

Dated at Chuka this 27th day of November, 2017

3. The application is supported by the affidavit of the applicant sworn on 27th November, 2017 which states:

"I ANN KAGENI of P. O. BOX 19 CHUKA in the Republic of Kenya make oath and sate as follows:

1. That I am the plaintiff/applicant herein hence competent to make this oath.

2. That while I was in court for other business in the lower court, I was informed by a court clerk in the ELC registry that my case (ELC CASE NO. 162 OF 2017) had been listed for dismissal on 23rd November, 2017.

3. That on 23rd November, 2017 despite having an injured leg I walked from my home at Kibumbu village, Kiang'ondu sub location, Kiang'ondu location Meru South Sub County to the law courts and by the time I reached the court I found out that the matters had been called out at the waiting bay (annexed and marked A.K.1 is a bundle of receipts in payment of medical expenses).

4. That on inquiry, I was told that my case was in the "high court" and which court room was upstairs.

5. That mistakenly I went and sat in the high court (instead of ELC Court) and waited for my case to be called out but in vain.

6. That while I was in the "high court" a person from my village who knew me very well informed me that she had heard my name being called out in the ELC Court.

7. That I then proceeded to the ELC Court only to find out that the court was in progress but my file was not called out.

8. That when the court went on for break I contacted the court clerk only to be told that the matter had been called out earlier and the suit dismissed.

9. That I then consulted an advocate in town who advised me to apply to the court for orders setting aside or vacating the dismissal orders of 23rd November, 2017.

10. That I did not knowingly and willingly fail to attend court when the suit was dismissed and my

failure to be in court was a mistaken identity of the court room and inadvertent.

11. That substantive justice of this case should persuade the court to reinstate my suit and the same be determined on merit.

12. That the orders sought are the most apt and best in the circumstances and no party stand (sic) to suffer any prejudice in the event that the suit is reinstated and set down for hearing.

13. That all what is deponed herein is true to the best of my knowledge, belief and information.

4. This application was filed by the applicant personally although the firm of I.C. Mugo, Advocates is still on record as her advocates.

5. The applicant asked the court to reinstate her suit. I have perused her pleadings in support of this application. She has annexed a bundle of receipts showing that she was undergoing medical treatment between July and September, 2017. This suit was dismissed on 23rd November, 2017.

6. The dismissal of the suit was predicated upon failure by the parties in this suit to show cause to the satisfaction of the court why it should not have dismissed the suit. The applicant says that she went to the wrong court room. Even assuming that she was in court, the case would have been dismissed if no cause was shown to the satisfaction of the court that the suit should not be dismissed.

7. Having perused the grounds on the face of the application and the applicant's supporting affidavit, it is pellucid that the applicant has not proffered even the minutest scintilla of explanation why from 18th May, 2012, when she filed this suit, she had taken no step for over 5 years towards prosecution of the suit. Yes, she may have been sick between July and September, 2017 but this is no satisfactory explanation as to why she had just filed her case and made the court registry a dumping ground for her non-active file.

8. Some litigants have assumed that if a suit is dismissed in terms of Order 17 Rule 2 of the Civil Procedure Rules, it is automatic that it will be reinstated upon the filing of an application for setting aside the dismissal. I opine that this should not be the case. The court process should not be reduced to a mere ritual. Where the court is not satisfied with the explanation given, a suit cannot be reinstated. Indeed, some argue that since Order 17, CPR, does not specifically provide for reinstatement of suits, for example, as provided for by Order 12 Rule 7, CPR, it is a moot point, if or not, a suit can be reinstated when dismissed under Order 17, CPR.

9. I opine that where no step has been taken for over 5 years AND no satisfactory explanation has been offered, such a suit merits dismissal.

10. In the circumstances, this application is dismissed.

Delivered in open court at Chuka this **11th day of December, 2017** in the presence of:

CA: Ndegwa

Ann Kageni – plaintiff

P.M. NJOROGE

JUDGE