



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 123 OF 2012

LIKIZO LIMITED.....PLAINTIFF

=VERSUS=

1. YERI KOMBE

2. MARTIN KOMBE

3. DAVID KITHUNGA

4. MUNICIPAL COUNCIL OF MALINDI.....DEFENDANTS

R U L I N G

1. On the 2nd October 2015, the court dismissed the Plaintiff's suit on its own motion pursuant to the provisions of Order 17 Rule 2 of the Civil Procedure Rules.
2. The Plaintiff has now filed an Application dated 29th October, 2015 in which he is seeking for the following orders:-
 - (a) **THAT the Court be pleased to reinstate the suit and set aside the orders dismissing the Plaintiff's suit on the 2nd of October, 2015 for want of prosecution.**
 - (b) **That costs be in the cause**
3. The Plaintiff's Application is premised on the grounds that the Plaintiff received the Notice to dismiss the suit on 21st October, 2015, which was 20 days after the suit was dismissed; that the Plaintiff had already filed an Application to amend the Plaint on 19th October, 2015 only to be informed that the suit had been dismissed and that the Plaintiff has not lost interest in the suit.
4. The Defendant's advocate filed his Grounds of Opposition in which he deponed that the Plaintiff's Application is bad in law and should be dismissed.
5. When the Application came up for hearing, the Plaintiff's advocate relied on the affidavit of the Plaintiff.
6. The Defendant's counsel submitted that although the Court allowed the Plaintiff to amend his Plaint on 6th March, 2014, he did nothing thereafter; that the Plaintiff has not explained why he took over a year to move the court and that his Application should be dismissed.
7. This matter was last in court on 6th March, 2014 when the court delivered its Ruling in which it allowed the Interested Party to defend the suit. The Plaintiff was directed to serve on the Interested

- Party with the summons and Plaintiff.
8. The Plaintiff did not activate the matter until on 2nd October, 2014 when the court dismissed the suit on its own motion.
 9. The Notice to Show Cause why the suit should not be dismissed was not only served on the Plaintiff's advocate by way of registered post, but was also posted on-line.
 10. Indeed, the Plaintiff's advocate has not denied that the postal address indicated on the Notice to Show Cause is his.
 11. The Plaintiff's advocate deposition that he only received the Notice to Show Cause on 21st October, 2015 cannot therefore be true.
 12. In any event, the Plaintiff has not even attempted to explain why he did not take any action in the matter since 6th March, 2014 when the matter was last in court. The Plaintiff has not stated if he served his amended Plaintiff to the Interested Party as ordered by the court.
 13. In the circumstances, this court has not been given any good reasons as to why it should set aside its orders of 2nd October, 2015 dismissing the suit for want of prosecution.
 14. For those reasons, I dismiss the Plaintiff's Application dated 29th October, 2015 with costs.

Dated, signed and delivered in Malindi this **13th** day of **May**, 2016.

O. A. Angote

Judge