



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.16 OF 2012

(formally Mombasa HCCC 639/11)

JOSEPH KASENA YERI.....PLAINTIFF

=VERSUS=

1. ACRE ONE LTD COMPANY

2. MAMBRUI SEA DENUS LIMITED

3. MANSOUR NAJI SAID

4. NATIONAL LAND COMMISSION

5. LAND REGISTRAR, MOMBASA

6. HON. ATTORNEY GENERAL.....DEFENDANTS

R U L I N G

Introduction

1. On 19th March 2014, this court, with the consent of the parties, made the following order:

“ The Plaintiff do set the suit down for hearing in the next 30 days failing which the suit shall stand dismissed for want of prosecution.”

2. The above consent order was precipitated by the Defendants' Application to have the suit dismissed for want of prosecution.

3. The Plaintiff has now filed an Application dated 22nd April 2015 in which he is seeking for the following orders:-

(a) The Hon. Court be pleased to set aside and/or vary orders issued on 14th April 2015 dismissing the suit herein.

(b) The Hon. Court be pleased to reinstate the suit herein and direct the same to proceed for hearing and be determined on merit.

(c) The costs of this Application to be provided for.

4. The Application is premised on the ground that the suit has been fixed for hearing on several occasions after the consent order of 19th March 2014.
5. In opposing the Application, the Defendants averred in their Grounds of Opposition that notwithstanding the events after the 19th March, 2014, the consent order of 19th March 2014 remained in full force and effect and was never varied, renewed and/or discharged.
6. In his submissions, the Plaintiff's advocate submitted that the suit was set down for hearing within 30 days as per the consent order of 19th March 2014; that the Plaintiff's representative was in the registry on 27th March 2014 and took an ex parte hearing date of 18th June 2014 and that the Defendants' Advocate was served with a hearing notice.
7. On his part, the Defendant's counsel submitted that the Plaintiff was required to set the suit down for hearing within 30 days from the 19th March 2014 and that the matter was never fixed for hearing within 30 days.
8. The only issue for determination before me is whether this suit was set down for hearing within 30 days or not pursuant to the consent order of 19th March 2014.
9. The Plaintiff has admitted that after the order of 19th March 2014, his representative went to the registry on 27th March 2014 to fix the matter for hearing. On that day, the record shows that the matter was fixed for hearing on 18th June 2014.
10. It is therefore obvious that the matter was not fixed for hearing on 27th March, 2014 but 18th June 2014.
11. Setting a matter down for hearing “within 30 days from the 19th March 2014” meant that the matter was to come up for hearing on or before 19th April 2014 and not attending the registry and fixing the matter for hearing on a date convenient to parties.
12. It does not matter if the suit would have proceeded on the said date or not. What matters is that the suit should have been fixed for hearing on or before 19th April 2014.
13. If the Plaintiff's representative was unable to get a hearing date within the 30 days, then the Plaintiff should have filed an Application seeking for extension of time or variation of the order of 19th March 2014. He did not do so but instead fixed the matter for hearing outside the period ordered by the court.
14. Having consented that this suit should stand dismissed unless it is set down for hearing within 30 days, the Plaintiff cannot claim that he has not been granted an opportunity to be heard. It is trite law that a consent, just like an agreement, binds the parties.
15. For those reasons, I dismiss the Application dated 22nd April 2015 with costs.

Dated and delivered in Malindi this 11th day of **September** 2015.

O. A. Angote

Judge

