

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 1456 OF 2001

DONALD KAWINZI MUTETI.....PLAINTIFF

VERSUS

MALIYA MUNGU MUTEI..... 1ST DEFENDANT

KATELEMBO ATHIANI MAVUTI FARMING

AND RANCHING SOCIETY LIMITED.....2ND DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 15th May 2013 in which the Plaintiff seeks for an extension of time within which the Application dated 12th February 2013 (hereinafter referred to as the “Reinstatement Application”) was to be filed so as to deem it filed within time and that costs of this Application abide in the cause.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff, Donald Kawinzi Muteti, sworn on 16th May 2013 in which he averred that the 1st Defendant died on 9th March, 2007 and that the proposed substitute to the 1st Defendant did not apply for Letters of Administration ad litem until 7th May 2011. He further averred that Letters of Administration ad litem were obtained on 25th January 2012. He further averred that his former Advocate was ordered by the court (Mutungi, J.) to file an application within 14 days from 17th January 2013 but he inadvertently filed it 20 days outside that timeline on 20th February 2013. He stated further that this is an ordinary human error which is excusable and should not be penalized. He further averred that no prejudice would be occasioned upon the proposed 1st Defendant and the 2nd Defendant by the extension of time as requested by the Plaintiff.

The Application is opposed. The 1st Defendant filed his Grounds of Opposition dated 10th June 2013 in which he stated that the Plaintiff had not given a good enough reason why he failed to abide by the court’s order. He further stated that a revival of the suit against the 1st Defendant would not serve any useful purpose because the suit does not disclose any cause of action against the 1st Defendant. The Application was further opposed by the 2nd Defendant who filed his Grounds of Opposition dated 20th June 2013 in which he stated that the suit need not be revived since there is no suit against the 1st and 2nd Defendants and it would be a waste of time to revive a dead suit.

I confirm that on 17th January 2013, Mutungi, J. made the following directions:

“In the circumstances of this suit since a legal representative to the 1st Defendant has been appointed, ... the Plaintiff should make the appropriate application to revive the suit against the 1st Defendant against whom the suit has abated by operation of the law. In the court’s

view, the Plaintiff was prevented by sufficient cause from proceeding with the suit. The Plaintiff is therefore granted leave to file the appropriate application within the next 14 days of the date hereof to revive the abated suit as against the 1st Defendant.”

Going by those directions, the Plaintiff had until 31st January 2013 to file the Reinstatement Application. However, he did so on 20th February 2013, which was 20 days later. The issue to determine is whether the Plaintiff should be granted an extension of time so that the Reinstatement Application may be deemed as duly filed. The main point of opposition to this being allowed from both Defendants is that the Plaintiff had no good reason for failing to file the Reinstatement Application within the time ordered by the court and for that reason he should not be accommodated by this court granting his request. To my mind, I am not entirely satisfied with the opposition to the Plaintiff being granted his request. This is bearing in mind that the Reinstatement Application was filed only 20 days after the time allowed by the court. This is not undue delay. I also cannot see any prejudice that either of the Defendants will suffer by my allowing this Application. Further, seeking to adhere strictly to the timeline given by the court and thereby denying the consideration of the Reinstatement Application on its own merits appears to me to having undue regard to technicalities which is prohibited under **Article 159(2)(d)** of the **Constitution of Kenya, 2010**. With that in mind, I hereby allow this Application. Costs shall be in the cause.

It is so ordered.

SIGNED AND DELIVERED IN NAIROBI THIS 11TH DAY OF JULY 2014.

MARY M. GITUMBI

JUDGE