

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 5 OF 2004

ORNATO ORZAZIO.....PLAINTIFF/RESPONDENT

=VERSUS=

BENARD BAYA MWARO.....DEFENDANT/APPLICANT

R U L I N G

Introduction:

1. The Plaintiff's suit was dismissed by Omondi J on 17th May 2011. On the same day, the Judge proceeded to hear the Defendant's counter claim. However the Defendant never closed his case.
2. This matter was fixed for hearing on 2^{4th} September, 2013 and 2nd December 2013, on which days both the Plaintiff and the Defendant were not in court.
3. On 2nd December 2013, this court, on its own motion, dismissed the Defendant's counter claim for want of prosecution and non-attendance.
4. The Defendant's advocate has now filed an application dated 3rd September 2014 in which he is seeking to have my Ruling dismissing the counterclaim set aside on the ground that the Defendant is still willing to prosecute his counterclaim.
5. I have noted that on 2nd December 2013, what was coming up was the hearing of the Plaintiff's advocate's application to cease acting for the Plaintiff and not the hearing of the counter claim.
6. In the circumstances, the Defendant or even his advocate was not obliged to be in court on that day. I should have dismissed the Plaintiff's Application dated 20th March, 2012 and not the Counter claim.
7. In the circumstances, I allow the Defendant's application dated 3rd September 2014 as prayed.
8. The Defendant is hereby directed to set down the Plaintiff's Application dated 28th March 2012 for hearing and thereafter the Counter claim.

Dated and delivered in Malindi this 7th day of **November**, 2014.

O. A. Angote

Judge