



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 286 OF 2012**

**TULETO OLE KISHAPUI SABORE.....PLAINTIFF**

**VERSUS**

**JOSEPH MUIGAI WANENE.....1<sup>ST</sup> DEFENDANT**

**THE DISTRICT, LAND REGISTRAR, KAJIADO.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 17<sup>th</sup> February, 2020, the Plaintiff has sought for the following orders:

*a) That this Honourable Court do declare that the firm of Kerina & Company Advocates has ceased to exist and can no longer continue to represent the Plaintiff.*

*b) That this Honourable Court do grant leave to the firm of A. H. Malik & Company Advocates to come on record in place of the firm of Kerina & Company Advocates.*

*c) That this court be pleased to set aside the order made by this Honourable Court on 2<sup>nd</sup> March, 2018 dismissing this Cause for Want of Prosecution.*

*d) That the Cause herein be reinstated forthwith and the same be set down for hearing on merits.*

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he filed the suit herein on 30<sup>th</sup> July, 2012 through his then Advocates, Kerina and Company Advocates; that the said firm of Advocates was a one man law firm of Benson Kerina Sampao who had no other partners or assistants and that from the year 2016, the said Advocate started to become rare in his office and most of the times when he visited his office, he was absent

3. The Plaintiff deponed that he immediately decided to instruct the firm of Sankale and Company Advocates to take over the matter from Mr. Kerina; that unfortunately, the new firm was unable to take up the matter as Mr. Kerina was nowhere to be found and his firm had since closed down completely and that when he checked in the registry, he discovered that on 2<sup>nd</sup> March 2018, his case had been dismissed by this court for want of prosecution.

4. The Plaintiff deponed that he is an old man of over 80 years old and sickly and thereby not very mobile making it hard for him to move around to find out about his case; that besides, he is illiterate and unable to follow up on his case on the internet or other search engines and that upon finding out that his case had been dismissed for want of prosecution, he decided to engage the firm of A. H. Malik and Company Advocates to act on his behalf.

5. The Plaintiff deponed that early this year, his Advocates were able to peruse the court file whereupon they advised him to file this Application to set aside the order made by this court on 2<sup>nd</sup> March, 2018 and that his new Advocates were also able to contact the Law Society of Kenya (LSK) whence they established that Mr. Kerina was conducting the business of law and court work without a certificate to do so since the year 2013.

6. The Plaintiff deponed that at the time the court purportedly served the Notice to Show Cause why this case should not be dismissed for want of prosecution in the year 2018, Mr. Kerina was not only out of active practice, but was already working for Kenindia Assurance Company Limited and that his law firm had been closed down.

7. It was deponed that the said Notice to Show Cause would not have been served on Kerina's office and the process-server who effected service may either have served the same on the wrong office or was mistaken on the same and that the order dismissing this case was made by the court on the basis of a mistaken believe that his Advocates had been served with the Notice to Show Cause, which cannot be true in view of the above information.

8. The Plaintiff finally deponed that the suit property is located in Kajiado County and measures approximately over 500 acres with a value of over Kshs. 500,000,000 and that it will be an injustice to him and a travesty to justice generally if he loses the land in the circumstances spelt out above. The Application was not opposed by the Defendants.

9. The record shows that the Plaint herein was filed by the firm of Kerina and Company Advocates on 29<sup>th</sup> July, 2012. In the Plaint, the Plaintiff sought for the annulment of five (5) Title Deeds in respect of parcels of land numbers Kajiado/Kaputiei-North/4255, 4256, 4257, 4258 and 4259 on the ground that the same had been fraudulently created by the Defendants after sub-dividing parcel of land known as Kajiado/Kaputiei-North/2904.

10. Although the Defendants were served with the Plaint and the Summons to Enter Appearance, they neither entered appearance nor filed a Defence. The matter stayed unprosecuted until 2<sup>nd</sup> of March, 2018 when this court, on its own motion, dismissed the suit for want of prosecution.

11. The Plaintiff has stated that his efforts to meet his then advocate were futile, and that he later on discovered that his advocate had not taken out a Practicing Certificate since the year 2013. The Plaintiff annexed on his Affidavit a letter from the Law Society of Kenya dated 30<sup>th</sup> January, 2020 in which it has been stated that Benson Kerina Sampao Advocate last took out a valid practicing certificate in the year 2012.

12. That being the case, the Plaintiff cannot be blamed for having not prosecuted the suit since the year 2013 until 2<sup>nd</sup> March, 2018 when the suit was dismissed for want of prosecution. Indeed, considering that the Plaintiff's former advocate was not in practice in the year 2018, he could not have been validly served with the Notice to show cause why this suit should not be dismissed for want of prosecution.

13. For those reasons, I shall allow the Plaintiff's Application dated 17<sup>th</sup> February, 2020 as follows:

*a) It is hereby declared that the firm of Kerina & Company Advocates has ceased to exist and can no longer continue to represent the Plaintiff.*

*b) Leave is hereby granted to the firm of A. H. Malik & Company Advocates to come on record in place of the firm of Kerina & Company Advocates.*

*c) The Order made by this Court on 2<sup>nd</sup> March, 2018 dismissing this suit for want of prosecution be and is hereby set aside.*

*d) This suit to be fixed for hearing on priority basis.*

*e) The costs of the Application to be in the cause.*

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2020.**

O.A. ANGOTE

**JUDGE**



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