



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL SUIT 221 OF 2007**

**MARINETTE SIFFERT ..... PLAINTIFF**

**V E R S U S**

**ABDALLA ALI .....DEFENDANT**

**RULING**

The application before Court requires a short Ruling. It is the application dated 21<sup>st</sup> June 2012 which seeks the setting aside of the order of this Court of 14<sup>th</sup> March 2012 dismissing the Plaintiffs suit.

On 14<sup>th</sup> March 2012 this matter came up for main hearing. (Not for an application as suggested by the Plaintiff's Counsel). The Hearing Notice dated 7<sup>th</sup> December 2011 served on them was clear enough, it was for hearing. When called out neither the Plaintiff nor her Counsel were present in Court. The Defence Counsel moved Court to dismiss the said for non-attendance and the Court obliged. From the rival affidavits it seems agreed that earlier on that day Mr. Mogaka for the Plaintiff instructed Mr. Angima to hold his brief. It is also agreed that Mr. Angima discussed the matter with Miss Okumu for the Defendant and subsequently the matter was slotted for 11.00am to enable Mr. Angima attend to a matter before another Court.

Come 11.00am and Mr. Angima had not returned. Neither was the Plaintiff present. The Defendant's Counsel says that Court having gone through its list for the day called out the file whereupon the dismissal happened. It turns out that Mr. Angima did not hold a valid Practising Certificate and was therefore not even in a position to hold brief for Mr. Mogaka.

I am inclined to allow the application. The dispute involves ownership of land and it is only fair that the matter be settled on merit, after each side has presented its story. My discretion to set aside the dismissal order is informed by the fact that the Court record does not portray the Plaintiff as a reluctant litigant. On 19<sup>th</sup> March 2009, 16<sup>th</sup> July 2009, 2<sup>nd</sup> December 2009 and 5<sup>th</sup> May 2010 the Plaintiff showed a willingness to proceed with the hearing but for reasons not of her making could not do so. In fact the Defence was not ready on 19<sup>th</sup> March 2009, 2<sup>nd</sup> December 2009 and 5<sup>th</sup> May 2010. This Court will give the Plaintiff an opportunity to have her day in Court.

I allow the application of 21<sup>st</sup> June 2012 but the Defendant will have costs of that application and for

the attendance of 14<sup>th</sup> March 2012. Costs in any event.

***Dated and delivered at Mombasa this 11<sup>th</sup> day of October, 2012.***

**F. TUIYOTT**

**JUDGE**

**Dated and delivered in open court in the presence of:-**

**Magiya for Mogaka for the Plaintiff**

**No appearance for the Defendant**

**Court clerk - Moriasi**

**F. TUIYOTT**

**JUDGE**



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