



Case Number:	Environment and Land Case 406 of 2017
Date Delivered:	15 Nov 2019
Case Class:	Civil
Court:	Environment and Land Court at Machakos
Case Action:	Ruling
Judge:	Oscar Angote
Citation:	Penina Monica Mutungi & another v Nicholas Nyamweya Nyariki & 4 others [2019] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Machakos
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 406 OF 2017

PENINA MONICA MUTUNGI.....1ST PLAINTIFF

MERCY NDANU MUTUNGI.....2ND PLAINTIFF

VERSUS

NICHOLAS NYAMWEYA NYARIKI.....1ST DEFENDANT

NYAMWEYA MAXWELL NYAATA.....2ND DEFENDANT

JULIANA MUTINDA MUTHOKA.....3RD DEFENDANT

GEORGE ONGERA OCHANDA.....4TH DEFENDANT

KATELEMBO ATHIANI MUPUTI FARMING &

RANCHING CO-OPERATIVE SOCIETY LTD.....5TH DEFENDANT

RULING

1. In the Notice of Motion dated 11th April, 2019, the Plaintiffs are seeking for the following orders:

a. The orders made on 5th April, 2019 be set aside and the suit be reinstated for hearing on merit.

b. The Respondent to bear the costs of this Application.

2. The Application is supported by the Affidavit of the Plaintiffs' advocate who has deponed that the matter was fixed for Notice to show cause why it should not be dismissed for want of prosecution on 5th April, 2019; that the Notice to show cause was delivered to his law firm offices on 4th April, 2019 in the evening and that he only became aware of the Notice to show cause on 5th April, 2019 in the morning.

3. The Plaintiffs' advocate deponed that he rushed to court the same morning from Nairobi and arrived in court at around 10.30am by which time the matter had been called out and dismissed in his absence; that the 1st to 4th Defendants have never entered appearance in the matter and that the Plaintiffs are keen in prosecuting the matter. The Application was not opposed.

4. The record shows that this suit was commenced by way of a Plaint dated 29th September, 2017. On 2nd November, 2017, the Plaintiffs' Application dated 29th September, 2017 for injunctive orders was allowed.

5. After the Application dated 29th September, 2017 was allowed, the matter stayed in abeyance until 5th April, 2019 when the same came up for the Notice to show cause why the suit should not be dismissed for want of prosecution.

6. The Plaintiffs' advocate has admitted that he was served with the Notice to show cause, and that he arrived in court at 10.30am when the matter had already been called out and dismissed. Indeed, the record shows that the Plaintiffs' counsel arrived in court at

10.30a.m.

7. Considering the efforts that counsel made to travel from Nairobi to Machakos on 5th April, 2019, and having addressed the court on the said date, albeit after the matter had been dismissed, I shall exercise my discretion in favour of the Plaintiffs.

8. For those reasons, the Application dated 11th April, 2019 is allowed. The Plaintiff to fix this matter for pre-trial directions within 120 days of the date of this Ruling.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF NOVEMBER, 2019.

O.A. ANGOTE

JUDGE



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