



Case Number:	Civil Suit 221 of 2007
Date Delivered:	11 Oct 2012
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Ruling
Judge:	William Kipsiro Tuiyot
Citation:	Marinette Siffert v Abdalla Ali [2012] eKLR
Advocates:	Magiya for Mogaka for the Plaintiff
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application Allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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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 21st June 2012 which seeks the setting aside of the order of this Court of 14th March 2012 dismissing the Plaintiffs suit.

On 14th March 2012 this matter came up for main hearing. (Not for an application as suggested by the Plaintiff's Counsel). The Hearing Notice dated 7th 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 19th March 2009, 16th July 2009, 2nd December 2009 and 5th 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 19th March 2009, 2nd December 2009 and 5th May 2010. This Court will give the Plaintiff an opportunity to have her day in Court.

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

the attendance of 14th March 2012. Costs in any event.

Dated and delivered at Mombasa this 11th 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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