



**Republic v Kenya Revenue Authority & another; Ekali (Exparte Applicant);
Muoka (Interested Party) (Judicial Review Miscellaneous Application
59 of 2016) [2023] KEHC 3190 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3190 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 59 OF 2016
OA SEWE, J
MARCH 31, 2023
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR ORDERS OF JUDICIAL REVIEW OF CERTIORARI,
PROHIBITION AND MANDAMUS
AND
IN THE MATTER OF THE STANDARDS ACT, CHAPTER 496 OF
THE LAWS OF KENYA
AND
IN THE MATTER OF KENYA REVENUE AUTHORITY ACT
AND
IN THE MATTER OF THE CUSTOMS & EXCISE ACT
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA REVENUE AUTHORITY 1ST RESPONDENT

KENYA BUREAU OF STANDARDS 2ND RESPONDENT

AND

PETER APUA EKALI EXPARTE APPLICANT

AND



RULING

1. By its Notice of Motion dated February 8, 2023, the 2nd respondent moved the court under sections 1A and 1B of the *Civil Procedure Rules*, Chapter 21 of the Laws of Kenya, as well as Order 17 Rules 2(1) and (3) and Order 51 Rule 1 of the *Civil Procedure Rules* for orders that this suit be dismissed with costs for want of prosecution; and that the costs of the application be provided for.
2. The application was predicated on the grounds that the ex parte applicant has taken no step or action whatsoever in the matter since October 17, 2017. The 2nd respondent averred that the delay of over 5 years is not only long and inordinate, but also unjustified; and that it goes to show that the ex parte applicant no longer has any interest in the suit. The grounds were expounded on in the supporting affidavit sworn by James Muruthi Kihara, Advocate, who has the conduct of the matter on behalf of the 2nd respondent. He annexed thereto a copy of the ruling dated October 17, 2017 by which the interested party's application was dismissed with costs.
3. Although the application was duly served on the applicant and the interested party, there appears to be no response thereto. Then, on the March 21, 2023 when the application was fixed for hearing, an order was made for the ex parte applicant to be accordingly served. Again, there was no appearance for or by the ex parte applicant on March 28, 2023 when the application dated February 8, 2023 came up for hearing. Accordingly, the matter proceeding to hearing after the Court was satisfied that the firm of M/s Ekuru Aukot & Company Advocates were duly served with a Hearing Notice.
4. A perusal of the court record shows that, upon leave being granted to the ex parte applicant for purposes of Order 53 Rule 1 of the *Civil Procedure Rules*, a substantive Notice of Motion was filed herein on August 15, 2016 by M/s Ekuru Aukot & Company Advocates, on behalf of the ex parte applicant, seeking Judicial Review Orders of *Certiorari*, Prohibition and *Mandamus*. In essence the ex parte applicant was questioning the decision of the respondents in selling, by way of public auction, Motor Vehicle described simply as Volkswagen Passat STDI 140 Chassis No. WVWZZZ3CZ8P083681 Engine No. BKP286901.
5. While the substantive motion was pending hearing, the interested party filed an application dated 5th January 2017 seeking orders, inter alia, that the Court be pleased to order refund by the 1st respondent of the purchase price, storage costs and other expenses amounting to Kshs. 2,367,906/=. In a ruling delivered on October 17, 2017, the Court (Hon. Ogola, J.) held that the claim was not a proper subject of Judicial Review proceedings. Hence, the application was dismissed with costs. Thereafter, an attempt by the 1st respondent to have its Party & Party Costs taxed as against the interested party was likewise dismissed by the Deputy Registrar on July 19, 2018. The matter remained dormant from that date till February 14, 2023 when the instant application was filed. It is therefore plain that the substantive Judicial Review Application dated August 12, 2016 has remained unprosecuted to date; and that there is no justification at all for that state of affairs.
6. Order 17 Rule 2 of the *Civil Procedure Rules*, states:
 1. In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.



2. If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 3. Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 4. The court may dismiss the suit for non-compliance with any direction given under this Order.
7. Accordingly, I find merit in the application dated February 8, 2023. The same is hereby allowed and orders granted as hereunder:
- (a) This suit be and is hereby dismissed with costs for want of prosecution;
 - (b) The ex parte applicant shall bear the costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 31ST DAY OF MARCH 2023

OLGA SEWE

JUDGE

JR MISC. APPLICATION NO. 59 OF 2016 RULING 2

