



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**JUDICIAL REVIEW APPLICATION NO.13 OF 2017**

**CHARLES ONYANGO.....1<sup>ST</sup> APPLICANT**

**AMOS KAMOTHO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE CHAIRMAN RENT RESTRICTIONS TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**WILFRIDA ANYANGO SAOKE .....2<sup>ND</sup> RESPONDENT**

**RULING**

1. A Chamber Summons for leave to commence Judicial Review proceedings for certiorari dated 27<sup>th</sup> April 2017 was filed in this court by Charles Onyango and Amos Kamotho on the same date through counsel M/s Motanya & Co. Advocates.

2. On the 9<sup>th</sup> May 2017 the court granted the leave sought and ordered that the substantive Notice of Motion be filed and served within 45 days.

3. The said Notice of Motion was filed on 23<sup>rd</sup> June 2017 but no progress on the same was recorded, and on 28<sup>th</sup> January 2019 the court dismissed the Notice of Motion for want of prosecution.

4. Thereafter, on 9<sup>th</sup> May 2019 the present application for setting aside the orders of dismissal of the application for want of prosecution was filed.

5. The applicant's counsel filed written submissions to the application but the respondents and their counsel did not attend court, no file submissions though I was informed that they were served with the Notice of Motion. The main thrust of the applicant's argument counsel is that a mistake of an advocate should not be visited on a litigant. He has urged this court to review its dismissal of orders above.

6. This application has been brought under Order 12 of the Civil Procedure Rule under Rule 7, a suit determined on the basis of non-attendance of a party may be revived by setting aside the order of judgment therein. Rule 7 provides as follows –

“7. Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon terms as may be just.”

7. The applicant's counsel has relied on the case of **Belinda Murei & Others – vs – Amoi Wainaina (1978)** stating that the court can exercise its discretion in favour of a litigant if the mistake was committed by counsel. In the present case the contention is that the mistake was that of counsel and not the applicants (litigants)

8. It is clear to me that the mistake herein was of counsel. In my view, the respondents will not suffer prejudice by the exercise for this court's discretion in favour of the applicants as there are no restrictive or prohibitory interim orders which will attach to reinstating the main Judicial Review application. At the end of the day also, every party herein will have the opportunity to be heard, as is envisaged under Article 159 of the Constitution and a decision on the merits be reached.

9. I am thus persuaded and will exercise this court's discretion in the applicants favour to give them a chance for application of substantive justice by hearing and determining their Notice of Motion on its merits.

10. I thus set aside the orders of the court of 28<sup>th</sup> January 2019 dismissing the substantive Judicial Review Notice of Motion herein dated 23<sup>rd</sup> June 2017. That Notice of Motion is hereby reinstated, but it will have to be fixed for hearing by June 2020. Costs in the cause.

**Dated and delivered at Kericho this 24th October 2019.**

**GEORGE DULU**

**JUDGE**