

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISC. APP. NO. 161 OF 2014.

GODWIN OUMA MAKUBE.....APPLICANT

VERSUS

MOSES DURU AMBASA1ST RESPONDENT

COUNTY LAND REGISTRAR BUSIA.....,2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RULING.

1. This is a ruling on a preliminary objection argued before me by Ipapu for the first respondent on 1/12/2015. The notice of that objection had been filed earlier on 27/10/2015. The hearing date of the objection had been taken by counsel on both sides on 16/11/2015. On the hearing date (1/12/2015) however, Jumba for the applicant did not appear. The applicant was also not there. The court decided to proceed. And proceed, it did.

2. The notice of the objection simply stated that the application dated 7th July, 2015 was an affront to the applicable law in that it was not seeking to appeal or review the ruling dated 23/4/2015.

3. During hearing, Ipapu urged the court to strike out the application. The application itself sought reinstatement of an earlier application dated 17th December, 2015 where the court had given a ruling. The ruling dismissed that application. According to Ipapu, the applicant is creating a circus. It is clear that the applicant had long ago come to court seeking leave to file judicial review proceedings. The court declined to grant leave. The application dated 17th December, 2015 was by the same applicant seeking similar leave. It, too, was dismissed. The applicants now wants that application reinstated.

4. When the preliminary objection herein was being argued neither the applicant nor his counsel was present. This is exactly the same scenario that obtained when the application sought to be reinstated was being heard. Talk of indolence; and this one comes very close to it. It is not lost on me that one of the reasons why the application sought to be reinstated was dismissed is that it was found to be RESJUDICATA an earlier application that had also been dismissed. Ipapu therefore seems to have a point when he talks of circus.

5. It is worth pointing out too that the applicant was found to be in abuse of the court process The situation is not much different here. I agree with Ipapu that the applicant is trying to create a circus. He seems to be in the habit of filing matters and not appearing for hearing. His first application was rejected. His second application was rejected too. Now this is yet another attempt to get what has already been refused. The applicant is trying to flog a dead horse. He cannot succeed . Ipapu's objection is therefore upheld and the application dated 6th July, 2015 is hereby struck out with costs to the respondents.

A. K. KANIARU

JUDGE

DATED AND DELIVERED ON 16TH DAY OF FEBRUARY, 2016.

IN THE PRESENCE OF;

PLAINTIFF.....

1ST RESPONDENT.....

2ND RESPONDENT.....

JUDGE.