



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISCELLANEOUS CIVIL APPLICATION NO 15 OF 2011**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDER OF  
CERTIORARI AGAINST THE EASTERN PROVINCE PROVINCIAL LAND APPEALS  
TRIBUNAL**

**AND**

**IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT (CAP 26) LAWS OF  
KENYA**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT (CAP 300)**

**AND**

**IN THE MATTER OF EASTERN PROVINCE PROVINCIAL LAND APPEALS TRIBUNAL  
APPEAL NO. 61 OF 2010 AND READ IN MERU CHIEF MAISTRATE'S COURT AS LDT  
NO.6 OF 2010**

**AND IN THE MATTER OF LAND PARCEL NO. IGOJI/MWERU11/1008**

**BETWEEN**

**ZACHARY MUTHAMIA M'MWITARI.....APPLICANT**

**VERSUS**

**EASTERN PROVINCE PROVINCIAL LAND APPEALS TRIBUNAL .....RESPONDENT**

**FABIAN MBAE M'IBARI.....INTERESTED PARTY**

**RULING**

This application is dated 10th December, 2014 and seeks orders:

1. ***THAT this Honourable Court be pleased to dismiss the Applicant/Respondent suit for want of prosecution.***
2. ***THAT costs of this application and those of the main suit be borne by the Applicant/Respondent herein.***

The application is supported by the affidavit of Fabian Mbae M' Ibari and has the following grounds:-

1. ***THAT the suit was last in Court on 20th February, 2012.***
2. ***THAT it is now over one (1) year since this was last in Court and no steps have since been taken by the Applicant/Respondent to carry on with the same.***
3. ***THAT the Applicant/Respondent has lost interest in the prosecution of this suit.***
4. ***THAT it is evident that this has suffered want of prosecution and deserves to be dismissed***

The application was canvassed by way of Written Submissions.

The Interest Party has submitted that that the ex-parte applicant failed to take any step in this matter for over one year and urges the Court to dismiss the suit in terms of order 17 Rule 2 of the Civil Procedure Rules. He submits that the indolence of the ex-parte applicant is against Written Law. He argues that the delay has been inordinate and inexcusable, in addition to being prejudicial to him.

The Exparte Applicant submits he is the registered owner of the Suit land. He says that the delay in the prosecution of the case was mainly because the Respondent had not filed his Replying Affidavit. He, interalia, says that the law firm of M/S Otieno Co. & Associates, Advocates, who represent the Interested Party, did not file or serve any Notice of Appointment and opines that, for this reason, the application is incompetent and improperly in Court for having been filed by an Advocate who is not on record.

On 03/03/2016, the Respondent told the Court that he dismissed of the suit and did not intend to file any responses or submissions.

I have carefully examined the submissions proffered by the parties. I have also perused the proffered authorities. I do note that on 13/5/2015, the Interested Party admitted that the main J R motion had not been served upon the Respondent. I find that this partly caused delay in this suit as the ex-parte applicant could not obtain directions from the Court in the absence of the responses of one of the applicants.

For a suit to be dismissed in terms of Order 17, CPR, the parties must fail to satisfy the Court that the suit should not be dismissed. **I find that the exparted- applicant has satisfied the Court that this suit should not be dismissed. Therefore, this suit is not dismissed.**

**Costs shall be in the cause.**

**It is so ordered.**

**Delivered in Open Court at Meru this 23rd day of March, 2016 in the presence of:-**

**P. M. NJOROGE**

**JUDGE**