



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISC.APP.NO.237 OF 2011

**IN THE MATTER OF: AN APPLICATION BY LEMPESHA KETUTA FOR ORDERS OF
APPLICATION FOR REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF: THE LAND DISPUTE TRIBUNAL ACT OF 1990

**IN THE MATTER OF: THE SENIOR RESIDENT MAGISTRATE'S COURT AT KAJIADO
AND LAND**

DISPUTE TRIBUNAL CASE NO.64 OF 2011 KOYIET LANKOI –VS- LEMPESHUA KETUTA

AND

IN THE MATTER OF: LR. NOS. KAJIADO/PURKO/147 AND 854

LEMPESHUA KETUTA.....PLAINTIFF

VERSUS

KOYIET LANKOI.....1ST RESPONDENT

THE KAJIADO LAND DISPUTE TRIBUNAL.....2ND DEFENDANT

THE SENIOR RESIDENT MAGISTRATE COURT AT KAJIADO...3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. The **Motion** for ruling is dated **18.10.2013** seeking to dismiss application dated 14.8.2012 for want of service and prosecution. The same is based on Order 17 Rule 2 Civil Procedure Rules (2010). The Application is supported by grounds (a) to (f) on the face of the Motion and the supporting affidavit of Koyiet Lankoi sworn on 18.10.2013. The application is opposed by the 1st Respondent who has sworn affidavit on 5.12.2013.

2. The matter came for hearing on 4.12.2014 but only Applicant appeared and proceeded with the

application. None of the Respondents or their Advocates appeared. The summary of the Applicant thrust is that the Notice of Motion dated 4.8.2012 was filed on 15.9.2012 and fixed for hearing on 17.10.2012. The same seeks to set aside Judge Makhandia orders of 5.7.2012 dismissing Judicial Review application dated 25.11.2012.

3. On 17.10.2012 the court ordered the Applicants in the application dated 14.8.2012 to serve Respondents Applicant herein but same was not complied with. The service was not done as ordered nor was application fixed for hearing for over one year since aforesaid orders were made. The Applicant thus seeks the prayers in Notice of Motion dated 18.10.2013.

4. The court record shows that, the Judicial Review dated 25.11.2011 was dismissed for non-attendance on 8.7.2012. The Applicant then and Respondent in instant motion lodged application dated 14.8.2012 and was ordered on 22.8.2012 to serve same and fix inter parte hearing. On 17.10.2012 the matter came before judge when Applicant in instant motion sought to be served with application dated 14.8.2010. The court directed once more same to be served in an order of 17.10.2012.

5. The Respondent never took any other action nor serve the motion prompting the filing of instant motion. The Respondent has failed to attend court to oppose the application. The court is left with no option but to allow the motion.

6. The court thus makes the following orders:

1. Application dated 18.10.2013 is allowed in terms of prayers 1 and 2.

Dated and Delivered at Machakos, this 13th day of March, 2015.

CHARLES KARIUKI

JUDGE