

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR ELC CASE NO. 78 OF 2011

DAVID KIMANI KAROGO.....APPLICANT

VERSUS

THIKA LAND DISPUTES TRIBUNAL1ST RESPONDENT

FLORENCE GATHONI NDUATI2ND RESPONDENT

RESIDENT MAGISTRATE'S COURT THIKA3RD RESPONDENT

RULING

By way of the application dated 28th March, 2013, the Applicant (David Kimani Karogo) who is the ex-parte Applicant in these judicial review proceedings prays that this Court sets aside the order issued on 12th November, 2012 dismissing his case. The application is supported by grounds on its face and a supporting affidavit sworn by the Applicant on 28th March, 2013.

The Applicant's case is that on the day his case was dismissed, his counsel one Mr. Mutuku had arrived in Court late and the matter was called in his absence. The said advocate allegedly indicated in the file that the matter had been stood over generally. It was only on 27th February, 2013 when it was discovered that the matter had been dismissed for non-attendance.

The 1st Respondent (Thika Land Disputes Tribunal) and the 3rd Respondent (the Resident Magistrate's Court at Thika), through counsel instructed by the Attorney General, indicated that they were leaving the matter to the Court. The 2nd Respondent (Florence Gathoni Nduati) opposed the application through a replying affidavit she sworn on 24th June, 2013. It is the 2nd Respondent's case that the dismissal order was legally issued after the Applicant's counsel failed to attend Court on 12th November, 2012.

I have carefully considered the application and find that when the matter came up for mention on 8th October, 2012 before Warsame, J (as he then was) the Applicant's counsel was not in Court. The matter was then fixed for hearing on 12th November, 2012. There is no evidence that the Applicant's counsel was aware of the hearing date. The Court record clearly shows that the Applicant's counsel had consistently attended Court prior to the dismissal. The application was brought immediately upon the discovery of the dismissal of the case. The 2nd Respondent will not suffer any prejudice if this matter is reinstated to hearing. It is in the interests of justice that matters are dealt with substantively.

For all the foregoing reasons, I allow the application and set aside the dismissal order issued on 12th November, 2012. The ex-parte Applicant's counsel is directed to have the matter listed for hearing on priority basis. Costs will be in the cause.

Dated, signed and delivered at Nairobi this 21st day of February, 2014

W. K. KORIR,

JUDGE OF THE HIGH COURT