



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. CIVIL APPLICATION NO. 95 OF 2004

REPUBLIC.....APPLICANT

VERSUS

MERU CENTRAL AGRICULTURE OFFICER.....RESPONDENT

A.G. RIUNGU, MUTWIRI & CO. ADVOCATES.....EXPARTE

RULING

This application by way of Notice of Motion is dated 10th July, 2013 and in it the Respondent through the Hon. The Attorney General seeks orders:

1. **THAT** this application be certified urgent and heard on the first instance.
2. **THAT** this Honourable Court be pleased to strike out and/or dismiss the Applicant/Respondents' Judicial Review application more particularly Notice of Motion application dated 9th June, 2004 and all orders thereto.
3. **THAT** the costs of the substantive application (Notice of Motion) and this application be provided for.

The respondent/applicant is concerned that even though the Judicial Review application was filed in June, 2004, the Applicant/Respondent has not prosecuted this application in blantant disregard of the law. He has, therefore, been occupying a government property on orders which have since lapsed and is in rent arreas amounting to Kshs.792,000/= as of 30th June. The respondent/applicant submits that in the best interest of Justice, the Applicant/Respondent's application dated 9th June, 2004 should be struck out and/or be dismissed.

The respondent in this application who is the applicant in the Judicial Review application has opposed the application vehemently. He has submitted that Judicial Review is a special Jurisdiction conferred upon the Court by Order 53 of the Civil Procedure Rules and the Law Reform Act, Cap 26 and that the Act and Order 53, CPR do not provide for dismissal or striking out a Judicial review application for want of prosecution. He argues that the provision of law that provides for dismissal is Order 17 Rule 2(1) of the Civil Procedure Rules. As the Court of Appeal, in among other authorities, Commissioner of Lands and Kunste Hotel Limited, Civil Appeal 79 of 1995 (Court of Appeal in Nakuru) had held that only the provisions of Order 53 of the Civil Procedure Rules and the Law Reform Act can be invoked in Judicial Review proceedings, this application should be dismissed as striking out or dismissal of suits falls under Order 17 of the Civil Procedure Rules. I agree with this position. I am, however, of the view that

Judicial Review proceedings should not remain unprosecuted for ever.

The Respondent/Applicant has also taken issue with the Counsel for the Applicant Respondent, Mr. Kieti of the Attorney General's Chambers, having sworn an affidavit contrary to Order 19 of the Civil Procedure Rules. I do not find it necessary to address this issue in depth.

I agree that Judicial Review proceedings are special proceedings to which no other statutory provisions, except Order 53 of the Civil Procedure Act and the apposite provisions of the Law Reform Act, apply.

I, therefore, dismiss this application.

Litigation must, however, somehow come to an end even when brought to Court by way of Judicial Review. I direct as follows:

1. the Respondent/Applicant who filed the Judicial review application in this suit MUST set down the application for hearing at this Court's registry within 45 days failing which the other party will be at liberty to take appropriate action with a view to having the application dismissed for want of prosecution .
2. I award no costs as the original applicant has been indolent as far as the prosecution of his application goes.

Dated and Signed in Open Court at Meru this 17th day of January 2014.

P. M. NJOROGE

JUDGE

Delivered in Open Court this 19th day of February, 2014 in the presence of

Cc Daniel

Kieti for AG for Applicant

A. G. Riungu Exparte Applicant present

P. M. NJOROGE

JUDGE