



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**JUDICIAL REVIEW NO. 58 OF 2009**

**EPHANTUS M. DANIEL.....APPLICANT**

**VERSUS**

**LAND DISPUTE TRIBUNAL COURT, NYAHURURU.....1<sup>ST</sup> RESPONDENT**

**THE RESIDENT MAGISTRATE COURT, NYAHURURU...2<sup>ND</sup> RESPONDENT**

**RULING**

This Judicial Review application was filed way back on 22/5/2009. From that date, nothing has been done towards the prosecution of the said application. On 7/5/2014, this court took out a notice against the applicant to show cause why the application cannot be dismissed for want of prosecution.

When the notice to show cause came up for hearing, Mr. Mwangi of the firm of Lawrence Mwangi & Co. Advocates appeared and sought to file a reply. An affidavit in opposition of the application was filed in which Mr. Mwangi deposed that the pleadings were filed by Benjamin Limo Advocate, who was running his office when he was out of the Country; that he has been in USA since 2009 and was not aware of the matter; that he returned on 11/3/2014 and the notice to show cause was served on his firm. He further deposed that Mr. Limo left his firm to start his own in Eldoret and did not do proper hand over and that the mistakes of Mr. Limo should not be visited on the applicant.

I have duly considered this application. A Judicial Review application is first made by way of a chamber summons accompanied by a statement of facts and a verifying affidavit seeking leave of the court to commence judicial review proceedings. On the file before me, there is no chamber summons application. There is only a statement of facts and verifying affidavit on record and hence no application.

This application was filed on 22/5/2009, 5 years ago. Despite the by the counsel that it is another advocate who filed it when he was away, yet there is no explanation from the applicant himself as to why he has not done due diligence to find out what happened to his case. The responsibility does not lie with the advocate alone, challenging a decision giving his land to another party. Why would that challenge to the decision lie dormant five years without any action. Without the applicant's explanation as to what he had done towards ensuring that this application is heard, I find no good reason why this incomplete and incompetent application should remain in the court's records as a pending case. In the end, the application is hereby dismissed for being incompetent and for want of prosecution.

**DATED and DELIVERED this 18<sup>th</sup> day of July, 2014.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Oumo holding brief for Mr. Mwangi for the applicant

N/A for the respondents

Kennedy – Court Assistant