



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIAMANI LAW COURTS
JUDICIAL REVIEW DIVISION
MISC. APPL. NO. 70 OF 2005

BETWEEN

REPUBLICAPPLICANT

AND

THE CHAIRMAN, LAND DISPUTES TRIBUNAL,

GATUNDU NORTH.....RESPONDENT

GEORGE MUGO GITAU.....INTERESTED PARTY

EX-PARTE

JAMES MWANGI MUCHIRI

RULING

1. The Notice of Motion dated 21st February 2013 seeks to set aside the order of dismissal for want of prosecution made on 7th February 2012. Whether or not to reinstate the suit is a matter for the court's discretion to be exercised based on specific facts brought before the court.
2. I have considered the application and the affidavit sworn by James Muchiri sworn on 21st February 2012 and he does not explain why the suit has remained unprosecuted for a period of seven years. The statement made by counsel that the court file was not to be found is a bare statement without foundation. The argument that the petitioner had no knowledge of the dismissal proceedings is also not set out in the deposition.
3. It is clear that there is no factual basis upon which I can exercise my discretion. Justice looks both ways and even where a person has a cause of action, justice demands that the case is prosecuted diligently and without delay so that the other party is not prejudiced.
4. I am unable to disturb the dismissal order. The Notice of Motion dated 21st February 2013 is dismissed with costs.

DELIVERED and **DATED** at **NAIROBI** this 7th August 2013

D.S. MAJANJA

JUDGE

Mr Njoroge instructed by Muturi Njoroge and Company Advocates for the *ex-parte* applicant

Mr Wandai instructed by Karuga Wandai and Company Advocates for the interested party.