



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
MISC. APPL. JR. NO. 123 OF 2013

BETWEEN

RUTH NYAMBEKI ABAYA..... APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS..1ST RESPONDENT

THE POLICE COMMISSIONER.....2ND RESPONDENT

AND

DAVID KURIA GITHINJI.....1ST INTERESTED PARTY

IBRAHIM NGAMAU WANGARI.....ND INTERESTED PARTY

STEPHEN KANYI KABIRU.....3RD INTERESTED PARTY

RULING

1. The *ex-parte* applicant has moved this court by the Notice of Motion dated 3rd July 2013 in which she seeks to be granted leave for the court to enlarge time within which she is to file the Notice of Motion dated 13th May 2013. The applicant's advocate stated that leave to commence judicial review proceedings was given on 22nd April 2013 on terms that the Motion be filed within 21 days. That the reason for the failure to file the Motion was that she was unable to raise the filing fee immediately and therefore time lapsed. She fears that if leave is not granted she will lose motor vehicle registration No. [particulars withheld] which she states she is a bona fide purchaser.
2. The application is opposed by the respondent on the ground that this is the second time leave is being sought and that the applicant has come to court with unclean hands. Counsel for the respondent noted that on 3rd September 2013, the *ex-parte* applicant advocate attended court and informed the court that the Notice of Motion had been filed and he undertook to serve it within three days. It is upon this position that the court issued orders for the filing of responses and highlighting of submissions today, 18th September 2013.

3. I have considered the application and submissions and I decline to extend time for filing the motion. The court record is clear that on 3rd September 2013, Mr Macharia, who appeared before the court on the ex-parte applicant, stated that, “*We have filed the notice of motion and we intend to serve it within 3 days.*” the court then ordered, that the applicant to serve the motion on the respondent and interested parties and gave further directions.
4. An applicant who is less than candid does not deserve the court’s discretion. In this case the record is clear that there was already a Notice of Motion upon which the court has already acted. I have perused the court record and there is no motion filed as alleged by the ex-parte applicant in the earlier proceedings. Therefore the Notice of Motion dated 3rd July 2013 is lacking in merit and is dismissed with costs.

DATED and DELIVERED at NAIROBI this 18th day of September 2013

D.S. MAJANJA

JUDGE

Mr Nyaberi instructed by Omwoyo, Momanyi , Gichuki and Company Advocates for the ex-parte applicant.

Ms Nyamweya, Litigation Counsel, instructed by the State Law Office for the respondents.