



REPUBLIC OF KENYA



**KENYA LAW**  
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**M'Limungi v County Government of Meru (Petition  
12 of 2017) [2022] KEELC 2639 (KLR) (11 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2639 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**PETITION 12 OF 2017**

**CK NZILI, J**

**MAY 11, 2022**

**IN THE MATTER OF CHAPTER FOUR – THE BILL OF RIGHTS**

**IN THE MATTER OF ARTICLE 19, 20, 21, 22, AND 23 OF THE**

**CONSTITUTION OF KENYA**

**IN THE MATTER OF ENFORCEMENT OF BILLS OF RIGHTS**

**AND**

**IN THE MATTER OF ALELGED CONTRAVENTION OF FUNDAMENTAL**

**RIGHTS AND FREEDOMS UNDER ARTICLE 40 AND 47 OF THE**

**CONSTITUTION OF KENYA 2010**

**BETWEEN**

**JOHANA M'AKWALU M'LIMUNGI ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MERU ..... RESPONDENT**

**RULING**

1. The court is asked through a notice of motion dated January 25, 2022 to set aside the orders dated January 24, 2022 and reinstate the petition for hearing. The reasons given are that the petition should be determined on merits and that that the failure to alleged court was out of inadvertence mistake to diarize or attend as explained in the supporting affidavit of Mr. Muia Mwanzia advocate sworn on January 25, 2022.
2. The court record indicates the petition was filed on August 18, 2017 claiming breach of Articles 28, 40 & 47 of *the Constitution* by the respondents; alleged to have compulsory taken the petitioners Plot No. 114 Mikinduri *vide* a letter dated June 4, 2014, the petitioner sought for declaration that his right to



property, fair administration action had been breached, damages thereof and for prompt compensation for the acquired land at current market rates. The respondent entered appearance and by a consent issued on December 14, 2017, parties agreed that a government valuer visit the plot at Mikinduri market and ascertain its status and files a report within 45 days.

3. Through a report filed in court on October 14, 2019 the National Land Commission stated it could not ascertain the ownership of Plot No. 114 since it was not registered and that there was no proof of ownership availed to them despite several requests to the county physical planner, the county surveyor and the parties. Further the county surveyor noted the Plot No. had arbitrary numbers which were not supported by known published cadastral maps.
4. The court record indicates that after the report was filed, parties requested for a copy and an order was made to that effect on January 23, 2020. The petitioner took a date for directions on January 6, 2022 for January 24, 2022 but did not show up in court. Similarly, even after the application herein was fixed for interpartes hearing on February 24, 2022, the petitioner to attend to confirm service upon the respondent. Looking at the application against the record herein, it is clear the petitioner is unaware of the status of his file. Once the report by the National Land Commission was filed on October 14, 2019, the applicant has taken no steps to fast track the hearing one way or the other.
5. In *City Star Shuttle Ltd vs County Government of Machakos* (2020) eKLR, Odunga J, while citing with approval *Murtaza Hussein Bandali T/A Shimoni Enterprises vs PA Wills* (1991) KLR 469 held that, whereas the court has inherent power to restore a case for hearing after it has been dismissed such a discretion is exercised on fixed principles and not out of sympathy or benevolence.
6. The court also held that equity would not grant its remedy if such an order would be in vain.
7. In this matter the petitioner has literally been in-active and disinterested in fast tracking the hearing of the petition since the filing of the report on valuation and status of Plot No. 114 on October 16, 2019. The report from the surveyor confirmed that the plot number was arbitrary and not supported by any published cadastral map hence making the confirmation of its status and authenticity impossible.
8. The applicant has taken no measures ever since to reconcile the conflicting reports from the County Surveyor, National Land Commissions and the County Government of Meru, so as to expedite the suit. Even if the court were to reinstate the suit it would be acting in vain.
9. In the premises, I see no merits in the applications dated January 25, 2022 otherwise the court would be acting in fulfilling to assist an indolent litigant who has deliberately delayed the course of justice for no good reason since 2019.
10. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 11<sup>TH</sup> DAY OF MAY, 2022**

In presence of:

Mrs. Muia for petitioner

Ikioo for Nkubi for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

