



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Miscellaneous Application 1760 of 2004

REPUBLICAPPLICANT

VERSUS

MWINGI DISTRICT COMMISSIONERRESPONDENT

EX-PARTE

WILSON NGUNA KIMENGA

RULING

On 7th February, 2012 a notice was issued to the advocates for the parties herein asking them to show cause why this matter should not be dismissed for want of prosecution. The ex-parte applicant, in opposition to the notice, filed an affidavit sworn on 17th April, 2012 by his counsel Albert Simiyu Murambi. The affidavit explains why the matter should not be dismissed. It gives a chronology of events from 11th December, 2009 when the applicant filed the application dated 10th December, 2009. The said application is seeking to set aside the order issued on 18th March, 2009 by Dulu, J dismissing the applicant's case.

As of now the applicant's case stands dismissed and the notice to show cause issued on 7th February, 2012 was therefore essentially directed at the application dated 10th December, 2009.

When the notice to show cause came up before me on 19th June, 2012 Mr. Kahumba for the respondent submitted that he did not support the intended dismissal of the applicant's application. He argued that the applicant should be heard so that substantive justice can be done in this matter.

The interested party supported the intended dismissal of the case by filing an "affidavit in support of dismissal". The same was sworn on 18th June, 2012 by his counsel, Mr. Ben Munyasya. Through the

affidavit the interested party portrays the applicant as an indolent party who should not be given a sympathetic ear by this court.

I have looked at the court file plus the affidavits of the applicant and the interested party. The applicant has not been up-to speed in prosecuting this matter. The file speaks for itself on the applicant's lethargy in having this matter heard and finalized.

There is however evidence on record showing that the applicant had at one time written to the deputy registrar indicating that the court file could not be traced in the registry. This is an era of substantive justice and the Constitution demands no less from the courts. Considering everything in this case, I conclude that the applicant should be given a chance to prosecute the application dated 10th December, 2009.

In order to ensure that the said application is heard and concluded without further delay I direct the respondent and the interested party to reply to it and also file submissions within 15 days from the date of this ruling. The hearing of the said application shall be on priority basis on a date to be fixed at the time of delivery of this ruling.

Dated and signed at Nairobi this 10th day of July , 2012

W. K. KORIR
JUDGE